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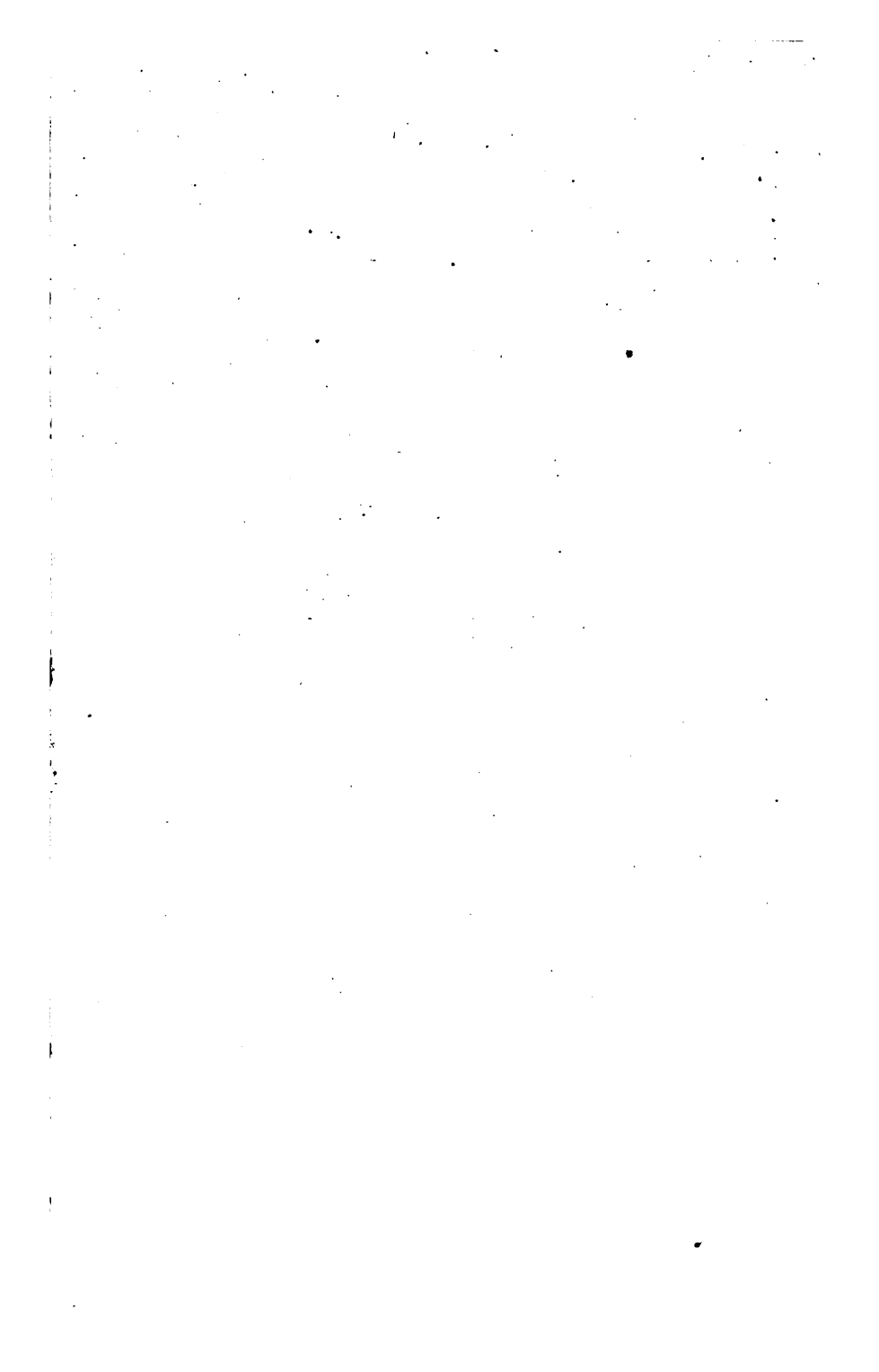
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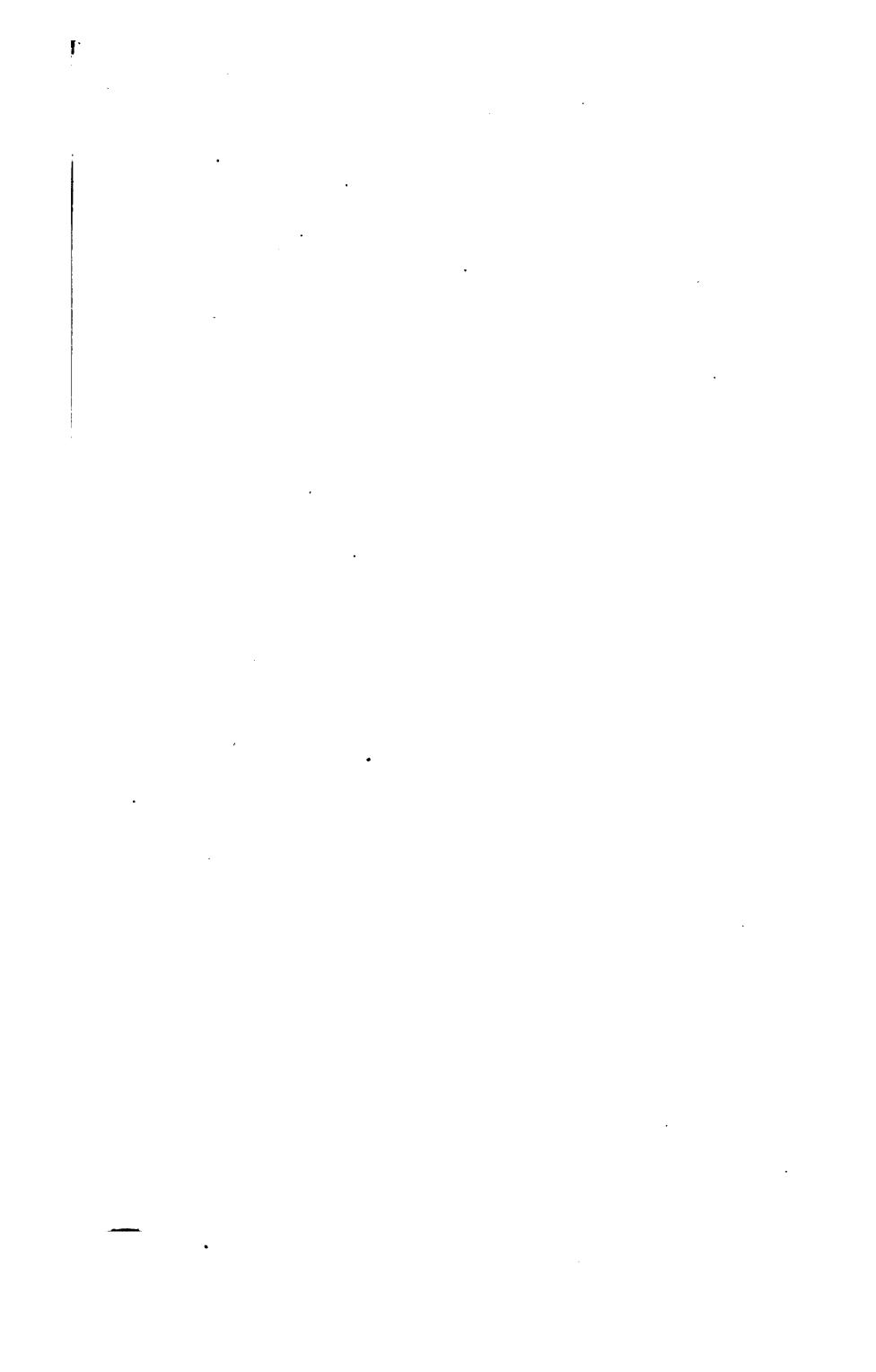


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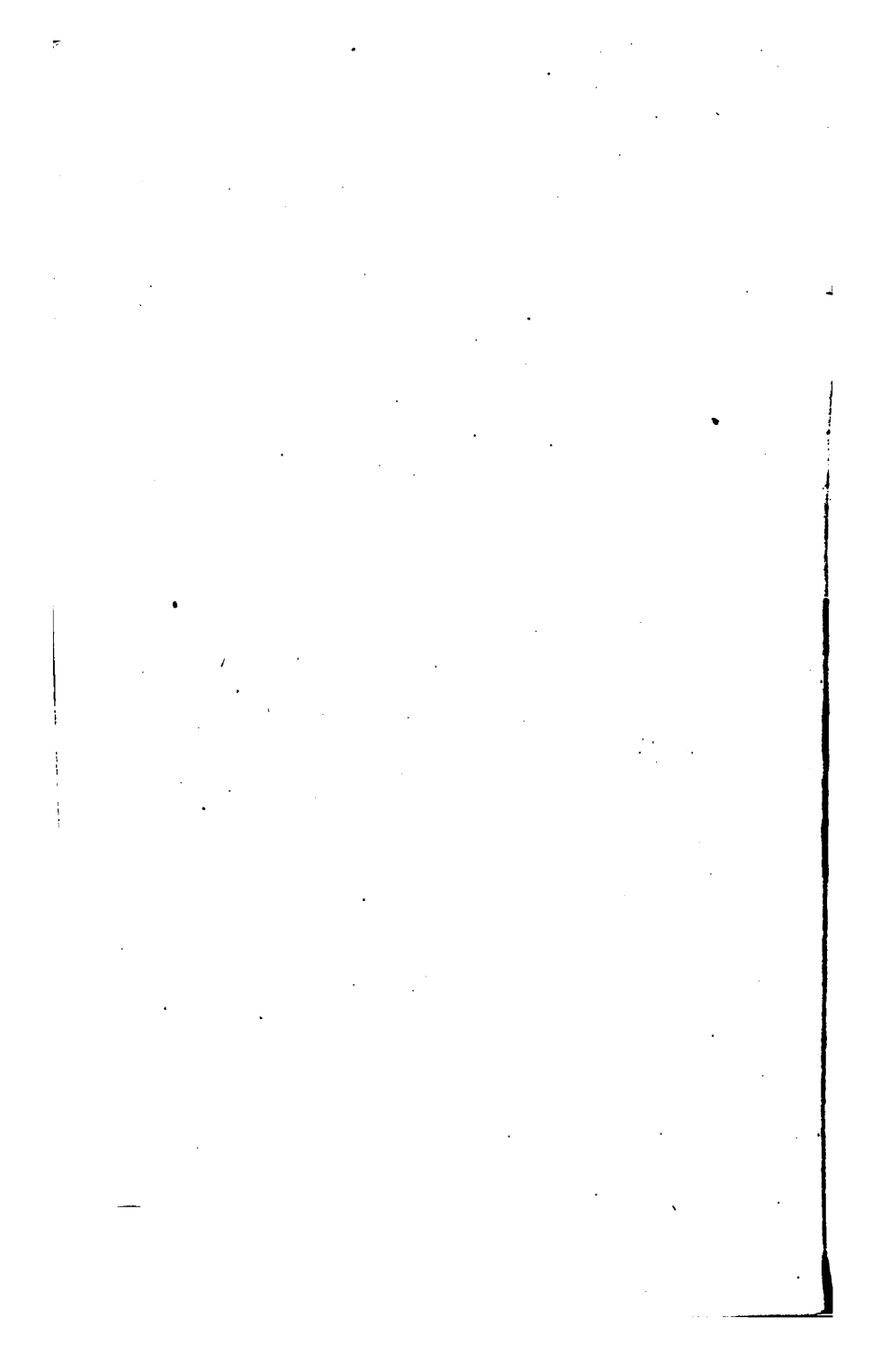
FROM

Estate of Miss Mary W. Tucker









T H E

LAWS FOR THE GOVERNMENT

OF THE

Massachusetts Militia,

AS AMENDED BY

CHAPTER 266, ACTS OF 1867.

PUBLISHED BY THE ADJUTANT-GENERAL,

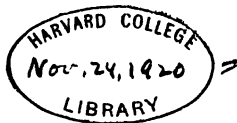
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Estate of
Miss Mary W. Tucker

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Chapter 219, of 1866, as amended by subsequent Laws.

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- 178. [Repealed.]
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- 184. None but organized companies allowed to be formed, &c.
- 185. Penalty for unlawful military parades, &c.
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Chapter 266, of 1867.

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- 4. Amount for travel, to whom paid.
- 5. Additional pay to officers and soldiers present during whole term of encampment, and mode of payment.
- 6. Repeal of sections 46, 110, 177, 178, chapter 219, Acts 1866.
- 7. When Act takes effect.

ENROLMENT.

SECTION 1. Every able-bodied male citizen, resident within this state, of the age of eighteen years, and under the age of forty-five years, excepting persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

Persons to be enrolled.
G. S. 13, § 1.
U.S. Statutes
1863, § 193.
1864, 238, § 1.

SECT. 2. Assessors shall annually in May or June make a list of persons living within their respective

Assessors to prepare lists, and clerks to

make re- limits liable to enrolment, and place a certified copy
turns. thereof in the hands of the clerks of their respective
G. S. 13, § 2. places, who shall place it on file with the records of
1864, 238, § 3. their city or town, and annually in May, June, or July,
1865, 250, § 18. transmit returns of the militia thus enrolled to the
adjutant-general.

Penalty for not giving information to assessors. SECT. 3. Keepers of tavern or boarding-houses, and
G. S. 13, § 8. masters and mistresses of dwelling-houses shall, upon
1864, 238, § 174. application of the assessors within whose bounds their
houses are situated, or of persons acting under them,
give information of the names of persons residing in
their houses liable to enrolment or to do military duty;
and every such person shall, upon like application, give
his name and age; and if such keeper, master, mistress,
or person refuses to give such information, or gives
false information, such keeper, master, or mistress shall
forfeit and pay twenty dollars, and such person shall
forfeit and pay twelve dollars, to be recovered on com-
plaint of either of the assessors.

Militia en- SECT. 4. The enrolled militia shall be subject to no
rolled not active duty, except in case of war, invasion, the pre-
liable to ac- vention of invasion, the suppression of riots, and to aid
tive duty, civil officers in the execution of the laws of the Com-
except, &c. monwealth; in which cases the commander-in-chief
G. S. 13, § 4. shall order out for actual service, by draft or otherwise,
1864, 238, § 12. as many of the militia as necessity demands.

—how draft- SECT. 5. The order of the commander-in-chief may
ed, upon or- be directed to the mayor and aldermen of cities or to
der of com- the selectmen of towns, who shall thereupon appoint a
mander-in- time and place of parade for the militia, in their city or
chief. town, and order them to appear at the time and place,
G. S. 13, § 5. either by leaving a written notice, or orally, and then
and there proceed to draft as many thereof, or accept as
many volunteers, as is required by the order of the
commander-in-chief; and shall forthwith notify the
commander-in-chief that they have performed such duty.

Penalty on SECT. 6. Every soldier ordered out, or who volun-
soldiers for teers, or is detached, or drafted, who does not appear at
not answer- the time and place designated by the mayor and alder-
ing sum- men, or selectmen, or who has not some able-bodied and
mons when proper substitute, at such time and place, or does not
drafted, &c. pay to such mayor and aldermen, or selectmen, for the
G. S. 13, § 6. 1864, 238, § 143.

use of the Commonwealth, the sum of seventy-five dollars within twenty-four hours from such time, shall be taken to be a soldier absent without leave, and dealt with accordingly.

SECT. 7. When the militia are ordered out, or have volunteered for, and while they are in actual service, as specified in section four, they shall be organized by the commander-in-chief, with the advice of the council, into companies, battalions, regiments, brigades, and divisions, which shall be numbered and record thereof made in the office of the adjutant-general; and shall be officered, governed and trained according to the laws of this state and the United States; and the state shall furnish arms and equipments for each non-commissioned officer and private, and pay them until their term of service expires; and when troops are in the field for such purposes, the senior officer of the troops present shall command, until the commander-in-chief or some officer detailed by him takes command. Each commissioned officer shall provide himself with suitable side arms.

Militia in active service, how organized, &c.
G. S. 13, § 7.
1864, 288, § 148.

—to be equipped by State, except, &c.

SECT. 8. When the commander-in-chief deems it necessary, he shall require cities and towns to provide, in some suitable place therein, sixty-four pounds of powder, one hundred pounds of musket and rifle balls, and also three copper, iron, or tin camp kettles for every sixty-four soldiers enrolled in said town, and the same proportion for a greater or less number, and to keep the same until such requirement is revoked. Every place neglecting to comply with such requisition shall forfeit and pay not less than twenty nor more than five hundred dollars.

Towns to provide ammunition, &c.
G. S. 13, § 8.

EXEMPTIONS.

SECT. 9. In addition to the persons exempted from enrolment in the militia by the laws of the United States, the persons hereinafter mentioned shall also be absolutely exempted from enrolment, viz.:—Justices and clerks of courts of record; registers of probate and insolvency; registers of deeds and sheriffs; officers who have held or may hold commissions in the regular or volunteer army or navy of the United States; officers who have held, for a period of five years, commis-

Exempts from all military duty.
G. S. 13, § 9.

sions in the militia of this or any other state of the United States, or who have been superseded and discharged, or who held commissions in any corps at the time of its disbandment; staff officers heretofore exempted, and whose offices shall become vacant by the provisions of section fifty-nine; ministers of the gospel; practising physicians; the superintendents, officers, and assistants employed in or about either of the state hospitals, state almshouses, state prison, jails, or houses of correction; keepers of light-houses, telegraphic operators, and conductors and engine drivers of railroad trains, and seamen actually employed on board of any vessel, or who have been so employed within three months next preceding the time of enrolment.

Exemption
of Quakers
and Shakers.
G. S. 13, § 10.

SECT. 10. Every person of either of the religious denominations of quakers or shakers, who, on or before the first Tuesday in May, annually, produces to the assessors of the city or town in which he resides, a certificate, signed by two or more of the elders or overseers, (as the case may be,) and countersigned by the clerk of the society with which he meets for public religious worship, shall be exempted from enrolment. The certificate shall be in form as follows:

We, the subscribers, of the society of people called _____ in the town of _____, in the county of _____, do hereby certify that _____ is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms.

A. B. } Elders or overseers,
C. D. } (as the case may be.)

E. F., Clerk.

—of engine-
men, &c.
G. S. 13, § 11.

SECT. 11. Enginemen, or members of the fire department in a city or town, shall be exempted from military duty by forthwith filing with the assessors of the city or town in which they reside, a certificate that they are enginemen or members of the fire department as aforesaid, signed by the mayor and aldermen of such city, or the selectmen of such town; but when a member of a volunteer company is, after his enlistment, appointed an engineman or member of the fire department, it shall not vacate his enlistment.

—soldiers
having bodily
infirmity,

SECT. 12. Every non-commissioned officer or private having bodily infirmity, may be exempted from

military duty, if he obtains from the surgeon or assistant-surgeon of the regiment, battalion, or detached company, to which he belongs, (or, if there are no such officers commissioned in such regiment, battalion, or company, then from some respectable physician living within the bounds of the same,) a certificate that he is unable to do military duty, on account of bodily infirmity, the nature of which shall be described in such certificate; and the captain or commanding officer of his company may, on the back of the certificate, discharge the non-commissioned officer or private named therein, from performing military duty, for a term of time which he judges reasonable, not exceeding one year; which certificate, when countersigned by the colonel or commanding officer of said regiment, battalion, or company, shall, for the time specified, exempt him from military duty, except attendance at the election of officers. If such non-commissioned officer or private, having obtained such certificate, is refused a discharge, he may apply to the commanding officer of the brigade, who may discharge him from military duty for such time, not exceeding one year, as he judges reasonable, by indorsing the same upon the surgeon's certificate.

how exempt
from duty.
G. S. 13, § 12.

VOLUNTEER MILITIA.

SECT. 13. The active militia shall be composed of volunteers; and in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the Commonwealth, shall first be ordered into service.

Active militia to consist of volunteers.
G. S. 13, § 13.

SECT. 14. The number of companies of the volunteer militia, exclusive of the two companies of cadets and the ancient and honorable artillery, shall be one hundred of infantry, eight of cavalry, and five of light artillery, and shall be apportioned among the counties according to population. The volunteer companies, however, now organized, shall be retained: *provided*, that no county in the Commonwealth shall, by reason thereof, be deprived of the right and privilege of enlisting and organizing its proportion of the volunteer force under the provisions of this act. And the commander-

Number of companies, how raised.
G. S. 13, § 14.
1865, 250, § 4.

in-chief shall have full power and authority, at any time hereafter, to disband any company or companies now organized, whenever, in his judgment, it shall be necessary or expedient, in order to give to each county its just proportion of the organized militia.

—of officers
and men.

The maximum number of commissioned officers, non-commissioned officers, musicians, farriers, artificers, waggoners and privates of said companies of cavalry and light artillery respectively, and the number and rank of the officers and non-commissioned officers of said companies of infantry, shall be the same as that now or hereafter established by the war department, or the congress of the United States, for the arms of the service to which such companies severally belong. The maximum number of commissioned officers, non-commissioned officers, musicians and privates of said companies of infantry shall be sixty-four.

New companies, how organized.
Limit of force.

Petitions for organizing volunteer companies may be granted by the commander-in-chief. No new company, however, shall be organized if thereby the whole force shall exceed six thousand officers and men.

Quota, how completed.
G. S. 13, § 15.

SECT. 15. When a county does not raise its quota, the commander-in-chief may grant petitions to complete the prescribed number in other counties.

Term of duty three years.
G. S. 13, § 16.
1865, 250, § 16.

SECT. 16. Non-commissioned officers and soldiers of volunteer companies shall do duty therein for three years, unless disability after enlistment incapacitates them to perform such duty, or they are regularly discharged by the proper officer.

Election of officers.
G. S. 13, § 17.

SECT. 17. No election of officers shall be ordered in a company hereafter organized unless at least fifty men have been enlisted therein. Upon the enlistment of that number, and notification given to the commander-in-chief by one or more petitioners for the company, attested by the mayor and aldermen or selectmen, an election of officers may be ordered; and if there is no officer of the volunteer militia conveniently located to preside at such election, the commander-in-chief may issue an order for that purpose to one or more of the selectmen or mayor and aldermen of the place where a majority of the petitioners reside.

SECT. 18. Whenever a volunteer company is formed, the signatures of the members thereof to an enlistment roll issued from the office of the adjutant-general shall constitute a legal enlistment. The non-commissioned officers and privates of each volunteer company, and all recruits admitted into the same, shall sign their names in a book of enlistment, to be kept by the commanding officer of the company for the purpose, in such form as shall be prescribed by the commander-in-chief, which signing shall be a legal enlistment.

Enlistments,
how made,
&c.
G. S. 13, § 11.
1864, 238, §
18.
1866, 250, §
11.
4 Mass. 556.
8 Mass. 274.
11 Mass. 239.
13 Mass. 491.
3 Pick. 264.
11 Pick. 265.

SECT. 19. The commander-in-chief may arrange the volunteer militia, when they exist in sufficient numbers and are conveniently located, into divisions, brigades, regiments and battalions, conformably to the laws of the United States, and make such alterations as from time to time may be necessary. Each division, brigade, regiment and battalion shall be numbered at the formation thereof, and a record thereof made in the office of the adjutant-general.

Militia to be
arranged in-
to divisions,
&c., and
numbered.
G. S. 13, § 19.
1864, 238, §
14.

SECT. 20. Companies of cavalry and artillery inconveniently located for such organization may be attached to such brigades as the commander-in-chief shall order.

Cavalry and
artillery, how
attached.
G. S. 13, § 20.
1864, 238, §
19.

SECT. 21. The company of cadets in Boston and the company of cadets in Salem may be attached to the same division or to separate divisions as the commander-in-chief shall direct.

Cadets of
Boston and
Salem.
1864, 238, §
19.

SECT. 22. Companies attached to divisions or brigades, and not to regiments, shall, until otherwise organized, be subject to the immediate orders of the commanders of such divisions or brigades, who shall receive the returns and orders, have the authority and perform the duties, with regard to such companies, which are prescribed for the commanders of regiments and battalions with regard to their companies.

Companies
attached to
divisions or
brigades, to
whose orders
subject.
G. S. 13, § 22.
1864, 238, §
20.

SECT. 23. The commander of a regiment or battalion may raise by voluntary enlistment, and warrant and organize, within the limits of his command, to be under his direction and command at encampments, or at any regimental parade ordered by the commander-in-chief, a band of musicians, not to exceed, including a master and deputy-master, eighteen for a regiment and

Regimental
and battal-
ion bands.
G. S. 13, § 23.

eight for a battalion. The master, and in his absence the deputy-master, shall teach and command the band and issue all orders directed by such commander. Each member of the band shall keep himself provided with such uniform as may be directed by the commander-in-chief, and such instrument as the commander of his regiment or battalion prescribes, under penalty for each neglect, or deficiency, or for misconduct, of dismissal from the band by such commander, and of not less than ten nor more than twenty dollars, to be recovered on complaint by the adjutant.

Companies may be disbanded for non-compliance with laws.

G. S. 13, § 24.
1864, 238, § 21.

—for being without officers, &c.

G. S. 13, § 25.
1864, 238, § 22.

Discharge of soldiers.

G. S. 13, § 26.
1864, 238, § 23.

SECT. 24. If it appears to the commander-in-chief that a company of militia has failed to comply with the requisitions of the law in matters of uniform, equipment and discipline, so that it is incapacitated to discharge the duties required of it, such company may be disbanded by the commander-in-chief.

SECT. 25. If a company is destitute of commissioned officers, and, having been twice ordered to fill vacancies, neglects or refuses to fill them, such company may be forthwith disbanded by the commander-in-chief.

SECT. 26. The commander of a regiment may, upon the written application of the commander of a volunteer company in his regiment, accompanied by a request in writing, signed by a non-commissioned officer or private, discharge such non-commissioned officer or private from the company; and the commander of a company unattached, may, upon an application in writing, signed by a member thereof, discharge such member; and commanding officers of regiments or detached companies may discharge non-commissioned officers or privates of volunteer companies, upon the request by vote of a majority of the active members of the company.

OFFICERS—APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE OF.

Officers of the militia.
G. S. 13, § 27.
1867, 266.

SECT. 27. The militia under the command-in-chief of the governor of the Commonwealth, shall be organized as follows:—The staff of the commander-in-chief shall consist of an adjutant-general, who shall be the chief of the staff with the rank of major-general, and shall be also the inspector-general of the militia; a

quartermaster-general and surgeon-general, each with the rank of brigadier-general, and four aides-de-camp, each with the rank of colonel, and such additional officers of the general staff as the public service may require, with such rank as the commander-in-chief may designate.

The quartermaster-general shall be also chief of ordnance and commissary-general of subsistence. Quartermaster-general.

To each division there shall be one major-general, whose staff shall consist of an assistant-adjutant-general, who shall also be chief of staff, with the rank of colonel; one assistant-inspector-general, with the rank of lieutenant-colonel; one medical-director, who shall be a surgeon and shall have the rank of colonel; one assistant-quartermaster, with the rank of lieutenant-colonel; two aides-de-camp, one engineer of division, and one judge-advocate, who shall be a justice of the peace, each with the rank of major. Officers of divisions.

To each brigade there shall be one brigadier-general, whose staff shall consist of one assistant-adjutant-general, with the rank of lieutenant-colonel; a medical-director of brigade, with rank of lieutenant-colonel; one assistant-inspector-general, with rank of major; one assistant-quartermaster, one aide-de-camp, one engineer of brigade, and one judge-advocate, who shall be a justice of the peace, each with the rank of captain. Officers of brigades.

To each regiment there shall be one colonel, one lieutenant-colonel, and one major; also one adjutant and one regimental quartermaster, each with the rank of first lieutenant; one regimental surgeon, with the rank of major; one regimental chaplain, to be borne on the field and staff-roll next after the surgeon; one regimental assistant-surgeon, with the rank of first lieutenant; one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one hospital-steward, and one drum-major. Regimental.

To each separate battalion there shall be one major; also one adjutant, one battalion-quartermaster, and one assistant-surgeon, each with the rank of first lieutenant; one sergeant-major, one quartermaster-sergeant, and one hospital-steward. Battalion.

Company.
1866, 259.

To every company there shall be one clerk, who shall be one of the sergeants. To the company of cadets in Boston, one captain with the rank of lieutenant-colonel; one lieutenant, one ensign, and one surgeon, each with the rank of major; one adjutant and one quartermaster, each with the rank of first lieutenant. To the company of cadets in Salem, one captain and one surgeon, each with the rank of major; one captain, three first lieutenants and four second lieutenants. Also, one adjutant and one quartermaster, each with the rank of first lieutenant. To each of said companies of cadets, five sergeants, four corporals and four musicians; and there may be to each of said companies such number of company officers of a rank, in the company in Boston, not above first lieutenant, and in the company in Salem, not above second lieutenant, as the commander-in-chief may from time to time deem expedient for instruction in the school of the battalion; and of such non-commissioned officers, musicians and privates as the commander-in-chief may direct. Companies of cavalry and artillery attached to brigades, as mentioned in section twenty, shall be entitled to an adjutant and one assistant-surgeon each, with the rank of first lieutenant, to be appointed by the commanding officers of said companies respectively, and commissioned by the commander-in-chief, and to hold their commissions, as other staff officers now do, or until the companies to which they are attached are organized into battalions or regiments of the same arm; and an adjutant so appointed and commissioned shall receive the same compensation as is allowed to other officers of such companies.

1866, 259.

Duties, by
whom per-
formed when
cert'n offices
are vacant.
G. S. 18, § 28.
1865, 250, §
20.

Companies
without offi-
cers, how
commanded.
G. S. 18, § 29.

SECT. 28. When the office of major-general, brigadier-general, colonel, major or captain is vacant, or such officer is sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion or company, until the vacancy is supplied.

SECT. 29. When a company has neither commissioned nor non-commissioned officers, the commander of the regiment or battalion to which it belongs shall appoint suitable persons within said company to be non-commissioned officers thereof; and shall appoint one of the non-commissioned officers to be clerk, indorse

the appointment on his warrant, administer the oath to him, and certify the same, as required by section fifty-three. The senior non-commissioned officer of a company without commissioned officers, shall command the same, except upon parade, and as provided in the following section.

SECT. 30. When a company is first enrolled, or from any cause is without officers, and an election of officers is ordered, if such company neglects or refuses to elect any officer, or the persons elected shall not accept, the commander of the regiment or battalion to which it belongs shall detail some officer of the staff or line of the regiment to train and discipline said company until some officer is elected or appointed by the commander-in-chief. Such officer shall have the same power, and be subject to the same liabilities, as if he were captain of said company; shall keep the records of the company, and prosecute for all fines and forfeitures, in like manner as a clerk might do, under section one hundred and sixty; and all meetings of such company shall be notified as provided in section one hundred and two.

SECT. 31. The officers of the line of the militia shall be elected as follows:—Major-generals, by the senate and house of representatives, each having a negative upon the other. Brigadier-generals, by the written votes of the field officers of the respective brigades. Field officers of regiments and battalions, by the written votes of the captains and subalterns of the companies of the respective regiments or battalions. Captains and subalterns of companies, by the written votes of the non-commissioned officers and privates of the respective companies.

SECT. 32. The staff officers of the militia shall be appointed in manner following:—The staff of the commander-in-chief by the commander-in-chief, the staff of a major-general commanding a division by the major-general, the staff of a brigade commander by the brigadier-general commanding the brigade, the regimental staff by the colonel of the regiment, the battalion staff and the staff-officers of the cadet companies by their respective commanding officers. No surgeon or assist-

Companies refusing, &c., to elect, how commanded. G. S. 13, § 30. 23 Pick. 203-214. 24 Pick. 172.

Officers of the line, how elected. G. S. 13, § 31. 1864, 238, § 27.

Staff officers, how appointed. G. S. 13, § 32. 1864, 238, § 27. 1867, 266.

Surgeons to furnish evi-

dence of com-
petency.

ant-surgeon shall be commissioned until he shall have furnished satisfactory evidence to the commander-in-chief that he is competent to perform the duties of his office.

Non-com-
missioned
officers, how
appointed.
G. S. 13, § 33.
1864, 236, §
27-34.
1867, 266.

SECT. 33. The non-commissioned staff shall be appointed in manner following:—That of a regiment by the commander of a regiment, that of a battalion and of the companies of cadets by their respective commanders. Non-commissioned officers of companies, by the respective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion. Clerks, by the commanding officers of the respective companies.

Clerks.

—duties of,
how per-
formed in
case of va-
cancies, &c.

SECT. 34. When the office of clerk of a company is vacant, and it appears to the commander of the company that there is satisfactory evidence that no person will accept the same, he may issue his written order to a non-commissioned officer or private in the company, requiring him to perform all the duties of clerk, except keeping the records, for a term not exceeding three months; in case of the absence, sickness or inability of the clerk, the commander of the company may appoint a clerk *pro tempore*; or, upon satisfactory evidence that no one in the company will accept the office *pro tempore*, may order any non-commissioned officer or private to perform the duties of clerk until the clerk is able to perform the same or another is appointed; and any non-commissioned officer or private refusing or neglecting to perform such duty, when so ordered, shall forfeit to the use of the company not less than ten nor more than twenty dollars, to be recovered on complaint by the commander of the company. In such cases the records of the company shall be kept by the commander thereof as long as such vacancy, absence, sickness or inability continues, and records so kept shall be competent evidence of such orders and temporary appointments, as well as of matters of which they would be evidence if kept by the clerk.

Records to
be evidence.

Officers, how
commis-
sioned.
G. S. 13, § 35.
1867, 266.

SECT. 35. All commissioned officers shall be commissioned by the commander-in-chief, according to the respective offices and grades to which they may be elected or appointed, unless upon valid objection shown

upon hearing granted. Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion. Clerks shall have their appointments certified on the back of their warrants by the commanding officers of their respective companies.

SECT. 36. No idiot, lunatic, common drunkard, vagabond, pauper, or person convicted of an infamous crime, or who has been dishonorably discharged from the service of the United States or the militia of this Commonwealth, shall be eligible to any military office. Persons ineligible to office. G. S. 13, § 36. 1864, 238, § 29. 1867, 268.
When it appears to the commander-in-chief that a person thus ineligible has received a majority of the votes cast at an election of officers, he shall not commission him, but shall declare such election null and void, and appoint some person to fill the vacancy. —proceedings when such are elected.

SECT. 37. Commissioned officers shall take rank according to the date of their commissions. When two of the same grade bear an even date, the rank shall be determined by lot drawn before the commander of the division, brigade, regiment, battalion, company or detachment, or president of a court-martial, as the case may be. The day of the appointment or election of an officer shall be expressed in his commission, and considered as the date thereof. When he is transferred to another corps or station of the same grade, the date of the original appointment shall be expressed and considered the date of his commission. Rank of officers and date of election, &c., to be expressed in commission. G. S. 13, § 37. 1864, 238, § 38.

SECT. 38. When an officer loses his commission, upon affidavit made before a justice of the peace and produced to the adjutant-general, a duplicate commission shall issue of the same tenor and date. Loss of commissions, how supplied. G. S. 13, § 38. 1864, 238, § 39.

SECT. 39. Major-generals shall be notified of their elections by the secretary of the Commonwealth, and, unless within thirty days after such notice they signify to the secretary their acceptance of office, shall be taken to have refused the same. Major-generals to be notified of election. G. S. 13, § 39. 1864, 238, § 40.

SECT. 40. Major-generals of division shall order elections to fill all vacancies which occur in their respective divisions, in the office of brigadier-general, field officer, captain or subaltern. Such elections shall be held at the place most convenient for the majority of —to order elections of all commissioned officers. G. S. 13, § 40. 1864, 238, § 41.

the electors, and shall be ordered throughout each division at least once in each year; the elections of company officers first, and those of field officers next.

Notice of elections.

Penalty for absence.
G. S. 13, § 41.

3 Pick. 386.
1867, 286.

Presiding officers at elections.

SECT. 41. Electors shall be notified of elections at least four days previously thereto. A non-commissioned officer or private unnecessarily absent from company election, shall forfeit one dollar, to be recovered on complaint of the clerk, one-half to his use, and one-half to the use of the company.

SECT. 42. Officers ordering elections may preside, or detail some officer of suitable rank to preside, and in case no officer of sufficient rank resides within the county where such election is to be held, the chairman of the selectmen of the town in which such company is organized may preside at such election.

—who to preside, record and return.
G. S. 13, § 43.

1864, 288, § 43.

SECT. 43. A captain, or staff officer of the rank of captain, may preside at the election of an officer of equal or inferior grade within the limits of his regiment or battalion; but no candidate for the vacancy shall preside at the election, except to adjourn the meeting if no proper officer appears to preside.

At all elections such presiding officer shall keep a record of the proceedings, and make return thereof to the commanding officer of the battalion, regiment, brigade or division, as may be proper. If the company is unattached, such return shall be made to the adjutant-general.

Who deemed elected, acceptance, &c.

Election not legal unless duly notified.

SECT. 44. The person who has a majority of the written votes of the electors present at a meeting duly notified, shall be deemed elected, and the presiding officer shall forthwith notify him of his election, and make return thereof, or of neglect or refusal to elect, to the commander of the division. Every person so elected and notified, shall accept, if a brigadier-general or field officer, within ten days, or, if a company officer, within three days; otherwise he shall be taken to have refused. If before the meeting for the election of any officer is dissolved, the person chosen signifies to the presiding officer his refusal to accept, the same shall be recorded and make part of the return, and the electors shall proceed to another election. Elections may be adjourned,

not exceeding twice, and each adjournment for a period not exceeding two days; but no company election shall be legal unless it is notified in the manner prescribed in section forty-one, or at any adjournment of a meeting so notified, not exceeding four days.

The roster of the brigade, regiment or battalion, or the roll of the company, as the case may be, shall be produced at such elections, by the person having the legal custody thereof.

SECT. 45. When the electors neglect or refuse to elect to fill a vacancy, the commander-in-chief shall appoint a suitable person. The commanding officer of the division shall return all elections, and refusals or neglect to elect, to the commander-in-chief, and unless he is notified by the commander-in-chief of his intention to make an appointment, he may, if necessary, order a new election.

SECT. 46. [Repealed.]

SECT. 47. When an officer holding a military commission is elected to another office in the militia, and accepts the same, such acceptance shall constitute part of the return of the presiding officer, and shall vacate the office previously held, but such officer may continue to serve until his successor is qualified in his stead.

SECT. 48. Commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elect.

SECT. 49. When a person elected or appointed to an office refuses to accept his commission or qualify at the time of acceptance, the major-general shall certify the fact on the back thereof, and return it to the adjutant-general; and if the office is elective a new election shall be ordered.

SECT. 50. No candidate for office in the militia, pending or after an election, shall treat with intoxicating liquors the persons attending thereat, and no officer shall on days of military duty so treat persons performing such duty.

SECT. 51. No officer or soldier shall be arrested on civil process while going to, remaining at, or returning

Adjournment.
G. S. 13, § 44.
1864, 238, § 45.
1867, 266.

Roster.

Failure to elect.
G. S. 13, § 45.
1864, 238, § 30.
24 Pick. 181.

New election, &c.
1867, 266, § 6.

Acceptance of an office to vacate any before held.
G. S. 13, § 47.
1864, 238, § 46.
1867, 266.

Commissions how transmitted.
G. S. 13, § 48.
1864, 238, § 47.
Upon non-acceptance, new election to be order'd.
G. S. 13, § 49.
1864, 238, § 48.

Officers and candidates not to treat with intoxicating liquors.
G. S. 13, § 50.
1864, 238, § 49.
Officers, &c., on duty not

to be arrested. from a place where he is ordered to attend for election of officers or military duty.

G. S. 13, § 51.
1864, 238, §
50.

Oath of commissioned officers, how administered, &c.

G. S. 13, § 52.
1864, 238, §
51.

3 Cuah. 587.

SECT. 52. Every commissioned officer, before he enters on the duties of his office or exercises any command, shall take and subscribe before a justice of the peace, or general or field officer who has previously taken and subscribed them himself, the following oaths and declarations :

"I, A B, do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me God."

"I, A B, do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and the laws of the Commonwealth. So help me God."

"I, A B, do solemnly swear that I will support the constitution of the United States. So help me God."

And on the back of every commission the following certificate shall be printed and signed by the person before whom such officer is qualified :

This may certify that A B, commissioned as within on this day of , A. D., , personally appeared, and took and subscribed the oaths required by the constitution and laws of this Commonwealth and a law of the United States, to qualify him to discharge the duties of his office.

Before me,

Clerk's oath and certificate.

G. S. 13, § 53.
1864, 238, §
52.

5 Pick. 239.

SECT. 53. Every clerk of a company, before he enters upon his duties, shall take the following oath before the commanding officer of the company to which he belongs, viz. :

"I, A B, do solemnly swear that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me God."

The commander of such company shall, at the time of administering the oath, certify on the back of the warrant of the sergeant appointed to be clerk that he was duly qualified by taking the oath required by law.

Discharge of officers on their own request.

G. S. 13, § 54.
1864, 238, §
53.

SECT. 54. When an officer requests in writing his discharge from office, with the approval of the commanders of the regiment or battalion, brigade and division to which he belongs, the commander-in-chief may discharge him. If such officer belong to an unattached

company, he may be discharged in the same manner with the approval of the adjutant-general.

SECT. 55. No commanding officer shall approve a resignation under the preceding section, if the same is offered between the first day of May and the first day of November, unless the reasons for such resignation are urgent and proved to his satisfaction; and the rolls, orderly book, roster documents, and all other military property belonging to the Commonwealth in the custody of the officer resigning shall, before his discharge is delivered to him, be deposited with the officer having a right to the custody of the same.

SECT. 56. If an officer unreasonably refuses to approve an application for discharge, and it is so made to appear to the commanders above him, they may approve the same, and the commander-in-chief may discharge the applicant.

SECT. 57. No officer, other than a staff officer appointed by the commander-in-chief, shall be discharged by the commander-in-chief, unless upon his own request, except as follows: When it appears to the commander-in-chief that he has become unable or unfit to discharge the duties of his office, or to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of an infamous crime; when the commander of his division certifies that he has, either before or after receiving his commission, removed his residence out of the bounds of his command to so great a distance that in the opinion of such commanding officer it is inconvenient to exercise his command; when such commander certifies that he has been absent from his command more than one year without leave; upon address of both houses of the legislature to the governor; upon sentence of court-martial, after trial according to law: when the corps to which he belongs is disbanded; or when it shall appear that such officer has heretofore been dishonorably discharged from the service of the United States or the militia of this Commonwealth, in which cases he may be so discharged; and all staff officers may be discharged upon the request in writing of their commanding officers, by the commander-in-chief. Every officer, except when

Request for discharge between May and November not to be approved unless, &c.
G. S. 13, § 55.
1864, 238, § 54.

If officer unreasonably refuses to approve, who may discharge.
G. S. 13, § 56.
1864, 238, § 56.

Cases in which officer may be discharged.
G. S. 13, § 57.
1864, 238, § 56.
1867, 236.

under arrest, shall perform the duties of his office until he is discharged.

Discharge by appointment in U. S. army or navy.
G. S. 13, § 58.
1864, 238, § 58.

SECT. 58. When an officer accepts an appointment in the army or navy of the United States, his office shall thereby become vacant; and if, after accepting such appointment, he exercises any of the powers and authority of such office, he shall forfeit not exceeding three hundred dollars.

Tenure of office of staff officers.
G. S. 13, § 59.
1864, 238, § 59.

SECT. 59. The commissions of staff officers appointed by any other officer than the commander-in-chief shall expire as soon as the successor of such appointing officer is commissioned. Staff officers appointed by the commander-in-chief shall hold their offices for one year and until their successors are appointed and qualified, but may be removed at any time by the commander-in-chief.

Officers under arrest not to resign, &c.
G. S. 13, § 60.

SECT. 60. Officers under arrest shall not resign, but shall be suspended from exercising the duties of office.

Resignation of non-commissioned officers.
G. S. 13, § 61.
1864, 238, § 60.

SECT. 61. A non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, who may accept such resignation.

ADJUTANT, QUARTERMASTER AND SURGEON-GENERAL.

Adjutant-general, his duties.
1864, 238, § 62.

SECT. 62. The adjutant-general shall distribute all orders from the commander-in-chief; attend all public reviews when the commander-in-chief shall review the militia, or any part thereof; obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by the laws of the state and of the United States; furnish blank forms of the different returns that may be required, and explain the principles on which they should be made; distribute all books required to be furnished at the public expense; receive from the several officers of the different corps throughout the state returns of the militia under their command, reporting the actual condition of their uniforms, arms, accoutrements and ammunition, their delinquencies and every other thing which relates to the general advancement of good order and discipline, all of which the several officers of

the divisions, brigades and regiments are hereby required to make in the usual manner, so that the adjutant-general may be furnished therewith, and from all said returns he shall make proper abstracts and lay the same annually before the commander-in-chief; and he shall annually, on or before the first Monday in January, make a return in duplicate of the militia of the state, with the condition of their uniforms, arms, accoutrements and ammunition, according to such directions as he may receive from the secretary of war of the United States, one copy of which he shall deliver to the commander-in-chief, and the other of which he shall transmit to the president of the United States.

SECT. 63. He shall, within twenty days after the receipt of each company or band pay-roll, under sections one hundred and twenty-eight, one hundred and twenty-nine and one hundred and thirty-one, after carrying out therein opposite to the name of each man returned the amount of pay to which he is entitled, and certifying thereon that it contains the names of those persons only who are entitled to pay, transmit the same to the mayor and aldermen or the selectmen of the city or town in which the armory or place of assembly of such company or band is situated.

SECT. 64. He shall, on or before the twenty-fifth day of January in each year, make out a certified roll of the names of all the general, field and staff officers, that appear by the returns made to him under section one hundred and thirty-two to be entitled to the pay under sections one hundred and forty-four and one hundred and forty-six, and shall ascertain from the returns made to him under sections one hundred and twenty-eight and one hundred and thirty-one the amount of money necessary to re-imburse the several cities and towns, and shall submit such roll and result to the auditor, and the governor shall draw his warrant on the treasury for such sums as may be necessary to pay such officers and re-imburse such cities and towns.

SECT. 65. The quartermaster-general, under the direction and supervision of the commander-in-chief, shall purchase and issue all ordnance stores, artillery, arms and accoutrements, clothing, camp equipage and

—to certify
rolls, and
transmit to
towns.
1864, 288, §
63.

—to submit
to auditor
roll of off-
icers entitled
to pay, &c.
1864, 288, §
64.

Quartermas-
ter-general's
duties and
bond.
1864, 288, §
65.

military stores generally, except such as are expressly directed by law to be purchased by other officers. He shall, under the orders of the commander-in-chief, procure and provide means of transport for the militia, and for all its implements, munitions of war and military supplies, and shall be the keeper of the public magazines and of all military property of the Commonwealth, excepting such as is by law expressly intrusted to the keeping of other officers. He shall give bond to the state in the penal sum of twenty thousand dollars, with two sureties at least, to be approved by the governor and council, conditioned faithfully to discharge the duties of his office; to use all necessary diligence and care in the safe-keeping of military stores and property of the Commonwealth committed to his custody; to account for the same, and deliver over to his successor, or to any other person authorized to receive the same, such stores and property. And any other officer to whom any arms, equipments, stores or other property of the Commonwealth shall at any time be issued, may be required to give a bond to the satisfaction of the governor and council, with the like condition.

Surgeon-general's
duties.
1864, 238, §
67.

SECT. 66. The surgeon-general, under the direction and supervision of the commander-in-chief, shall purchase and issue all medical, surgical and hospital supplies, and perform all such other duties appertaining to his office as the commander-in-chief shall from time to time direct.

Adjutant,
quartermas-
ter, and sur-
geon-general
to render
accounts,
&c.
1864, 238, §
68.

SECT. 67. The adjutant-general, quartermaster-general and surgeon-general shall account as often as may be required by the commander-in-chief, and at least once yearly, to the commander-in-chief, in such manner as he shall prescribe, for all property which shall have passed through their hands, or the hands of the subordinate officers of their respective departments, or that shall be in their care or possession, and for all moneys which they shall expend in discharging their respective duties; and they shall annually, in January, lay before the auditor accounts with vouchers of their expenditures during the previous year.

SECT. 68. Neither the adjutant-general, quartermaster-general or surgeon-general, nor any assistant of either of them, nor any subordinate officer of their departments, shall be concerned, directly or indirectly, in the purchase or sale of any article intended for, making a part of, or appertaining to their respective departments, except for and on account of the Commonwealth, nor shall they or either of them take or supply to his or their own use any gain or emolument for negotiating or transacting any business in their respective departments, other than what is or may be allowed by law.

SECT. 69. When the service will permit, the commander-in-chief may require the duties imposed upon the quartermaster-general by this act to be performed by any member of his staff, who shall in that case give a bond to the state in like manner as is required of the quartermaster-general.

Duties of quartermaster-general may be performed by another staff officer.
1860, 238, § 70.
1865, 260, § 20.

ARMS, EQUIPMENTS, EQUIPAGE, ETC.

SECT. 70. All commissioned officers shall provide themselves with such uniforms and arms complete as the commander-in-chief shall prescribe, subject to such restrictions, limitations and alterations as he may order.

Officers' uniforms, &c.
1864, 238, § 71.

SECT. 71. Every company of cavalry, artillery, cadets and infantry duly organized under the militia laws of the Commonwealth, shall be furnished at the expense of the Commonwealth, with such uniforms, arms and equipments as are required for the performance of military duty in the manner prescribed by the provisions of this act, upon the written requisition of the commanding officer of such companies respectively.

Company uniforms, arms, &c., to be furnished by state.
1864, 238, § 72.

SECT. 72. The uniforms, arms and equipments so furnished shall remain and continue to be the property of the Commonwealth, to be used for military purposes only; and such as shall not have been properly expended in such use, shall be returned when called for by proper authority.

Company uniforms, &c., to remain property of state.
1864, 238, §§ 72-75
1867, 266.

SECT. 73. Every commanding officer of a company upon making a requisition upon the quartermaster-general or other officer charged with the custody of the military property of the Commonwealth, for the uni-

—how obtained on requisition, &c.

forms, arms and equipments required for the use of his company, shall furnish to the officer upon whom the requisition is made, a schedule of the articles of military property required, and no such uniforms, arms or equipments shall be issued to, or for the use of, any company, unless the said company shall have at least forty-eight officers, non-commissioned officers and privates actually belonging thereto, and duly enrolled for the performance of active duty.

—receipt
therefor.

SECT. 74. Upon the delivery of the uniforms, arms and equipments as aforesaid, the officer receiving the same shall receipt therefor in manner following, to wit:

I, A B, commanding officer of company _____, of the regiment, _____ brigade, _____ division, (or unattached company, as the case may be,) of the militia of Massachusetts, do hereby acknowledge that I have received of C D, (adjutant-general, quartermaster-general, or ordnance officer, as the case may be,) the several articles of military property set forth in the schedule hereto annexed, to be used by said company for the performance of military duty in conformity with the laws of this Commonwealth, and for no other purpose.

—where deposited, and
when used.
1867, 266.

SECT. 75. All arms, equipments and military property of every description, which shall be furnished to the several companies under the provisions of this act, shall be deposited in the armories of said companies respectively, for safe keeping, and be used only for the performance of military duty according to law.

Military
property to
be returned
to armory
within three
days after
use, &c.

SECT. 76. It shall be the duty of every officer, non-commissioned officer and soldier, to return to the armory or other place of deposit each article of military property of the Commonwealth issued to, and received by him for use in the military service, and not properly expended, within three days after such tour of duty, or forthwith upon order of his commanding officer. And the possession of any article of such property by the person to whom it was issued, not being in the armory or designated place of deposit, shall be deemed and taken to be *prima facie* evidence of embezzlement of such article of property by the person to whom it was issued, and he shall be liable to be punished therefor upon conviction.

Evidence of
embezzlement.
1867, 266.

SECT. 77. Every officer, non-commissioned officer and soldier, to whom a uniform or other article of military property shall be delivered, in pursuance of the provisions of this act, shall be held personally responsible for its care, safe keeping and return; he shall use the same for military parades only, and upon receiving a discharge or otherwise leaving the military service, or upon the written demand of his commanding officer, shall forthwith surrender and deliver up the said uniform, together with all other articles of military property that may be in his possession, to the said commanding officer, in as good order and condition as the same were at the time he received the same, reasonable use and ordinary wear thereof excepted.

Officers and soldiers responsible for uniforms, arms, &c., received by them.
1867, 266.

SECT. 78. Whoever shall wilfully or maliciously destroy, injure or deface any uniform or other article of military property belonging to the Commonwealth, shall be punished by a fine not exceeding double the amount of the value of such uniform or other property so injured, destroyed or defaced, to be recovered on complaint of the commander of the company to which such delinquent belongs, for the use of the Commonwealth; and he shall be imprisoned in the house of correction until such fine is paid, or until he shall be discharged therefrom by process of law.

Penalty for not returning, or injuring arms, uniforms, &c.
1864, 238, § 81.
1867, 266.

SECT. 79. Whoever uses or wears, except upon public parades or by special permission of his commanding officer, any uniform or other article of military property belonging to the Commonwealth, shall be punished by a fine not exceeding twenty dollars for every such offence, to be recovered in manner referred to in the preceding section.

—for using same, except on public parades, &c.
1867, 266.

SECT. 80. Any officer receiving public property for military use, shall be accountable for the articles so received by him, and shall not be honorably discharged from the service until he has returned to the adjutant-general a receipt from his successor in command, or a proper accounting officer, for the articles issued to him, in good order and condition, reasonable use and wear thereof excepted, or shown to the adjutant-general by satisfactory proof, that any article not so accounted has been properly expended in the service, or defaced,

—for selling, injuring, or destroying same.
1864, 238, § 74.
1867, 266.

injured, lost, or destroyed, without any default or neglect on his part; and if lost or wilfully defaced or destroyed through the misconduct of any person, that reasonable efforts have been made by him to recover or prosecute for the same. And in addition he shall be liable to make good to the Commonwealth all such property so defaced, injured, destroyed, or lost by any neglect or default on his part, and for the recovery of which he has made no reasonable effort, to be recovered in an action of tort in the name of the Commonwealth.

Arms, &c.,
exempt from
sales on
execution or
for taxes.
1864, 238,
76.

SECT. 81. Every officer shall hold his uniform, arms and accoutrements, required by law, free from all suits, distresses, executions or sales, for debt or payment of taxes.

ARTICLES FURNISHED BY THE STATE.

Camp equip-
age, &c., to
be furnished
by state
when re-
quired for
use.
1864, 238,
76.
1867, 266.

SECT. 82. Whenever any corps or detachment of the militia is ordered to perform any duty requiring the use thereof, the quartermaster-general shall deliver to the commanding officer of such corps or detachment, upon his requisition, duly approved, such tents, fixtures and other camp equipage, and such ammunition, as may be necessary for the discharge of such duty; and each officer to whom such property is delivered, shall be responsible for the safe-keeping of the same, which shall not have been properly expended, to the quartermaster-general, when the duty shall have been performed for which the same was issued, together with a correct list of the same, and it shall be the duty of every officer having property delivered to him upon his requisition, or receiving the same, on the first days of March, June, September and December, annually, to make to the chief of the department from which such property shall have been issued, a full return of all property so received by him, and for which he is by law accountable: and each commanding officer of a company for making such returns and for the responsibility of property for which he is held accountable, shall receive the sum of twenty-five dollars annually, to be paid only upon the certificate of the quartermaster-general and chief of ordnance, that all the

required returns have been made and the property under his charge accounted for.

SECT. 83. Each regiment and battalion shall be furnished by the state with the national and state colors, their staffs, belts and sockets, and the commander of such regiment or battalion shall be responsible for their safe keeping.

Colors for regiments and battalions. G. S. 13, § 77. 1864, 238, § 77.

SECT. 84. Each company of the volunteer militia, on application by the commander thereof to the adjutant-general, and producing satisfactory evidence that a suitable armory or place of deposit is provided therefor, agreeably to section ninety-four, shall be furnished with such appropriate arms and equipments as shall be determined by the commander-in-chief.

Arms and equipments furnished to companies. G. S. 13, § 78. 1864, 238, § 78.

SECT. 85. It shall be the duty of the commissioned officers of every company of the volunteer militia respectively to exercise the strictest care and vigilance for the preservation of the uniforms, arms, equipments and military property furnished to their several companies under the provisions of this act; and in case of any loss thereof or damage thereto, by reason of the wilful neglect or default of such officers, or either of them, to exercise such care and vigilance, he or they shall be held to make compensation therefor, to be recovered by an action of contract brought by the quartermaster-general against all or any of such officers; which action it shall be his duty to bring.

Arms and equipments, commissioned officers responsible for, in case of neglect, &c. G. S. 13, § 79. 1864, 238, § 79.

SECT. 86. In case of the discharge or death of an officer, he or his legal representative shall be relieved from responsibility for the safe keeping, preservation and return of the military property furnished to and in the possession of such officer by provisions of law, upon complying with the provisions of law relating to the accounting for public military property.

—how relieved from responsibility in case of discharge, &c. G. S. 13, § 80. 1864, 238, § 80. 1867, 266.

SECT. 87. Upon the disbandment of a volunteer company which has received uniforms, arms, equipments or equipage from the quartermaster-general, in accordance with the provisions of this act, the commissioned officers of such company shall be responsible for the safe return to the custody of the quartermaster-general of all public property in possession of said company; and for any loss or damage thereto compen-

Arms, &c., of disbanded companies, how disposed of. G. S. 13, § 81. 1864, 238, § 82.

sation may be obtained in manner provided in section eighty-five.

Musical instruments for companies, how furnished, &c.
G. S. 13, § 82.
1864, 238, § 83.

SECT. 88. Each company of militia shall be furnished with such instruments of music as the commander-in-chief shall order. Each commander of a brigade may make requisitions upon the quartermaster-general, or officer acting as such, in favor of the commanders of régiments, battalions and companies, for colors and instruments of music. Commanders of companies shall be responsible for the safe keeping of the instruments delivered to them for the use of their companies.

Cannon, ammunition, &c., for artillery.
G. S. 13, § 83.
1864, 238, § 84.

SECT. 89. Each company of artillery shall be provided by the quartermaster-general with the battery of manoeuvre prescribed for that arm by the war department of the United States; with caissons, harness, implements, laboratory and ordnance stores, which may, from time to time, be necessary for their complete equipment for the field, and, when target practice is expedient in the opinion of the commander-in-chief, such quantity of ammunition annually as he deems necessary to be expended in experimental gunnery. The commissioned officers of each company shall be accountable for the preservation of the pieces, apparatus and ammunition aforesaid, and for the proper expenditure of the ammunition.

Charges for horses, powder, &c., when company is ordered out for camp or salute duty, &c.
G. S. 13, § 84.
1864, 238, § 85.

SECT. 90. The commanding officer of such company, when it is ordered to march out of the city or town where the gun-house is situated, and on occasions of parade for experimental gunnery or camp duty, shall provide horses to draw the field pieces and caissons, and present his account of the expenses thereof, as provided in section one hundred and fifty-five. On all other occasions, when ordered out by an officer of competent authority for camp or salute duty, the charges for horses, powder and necessary expenses, shall be defrayed by the quartermaster-general.

Books of tactics, &c., to be furnished officers, &c.
1862, 111, § 3.
1864, 238, § 86.

SECT. 91. The commissioned and non-commissioned officers of the volunteer militia shall be furnished with such books of instruction in tactics and army regulations as the commander-in-chief shall deem expedient, which books shall continue to be the property of the

Commonwealth, and shall be carefully kept and delivered by such commissioned and non-commissioned officers to their successors.

SECT. 92. The commander-in-chief, with the advice and consent of the council, may sell or exchange, from time to time, such military stores belonging to the quartermaster-general's department as are found unserviceable or in a state of decay, or which they think it for the interest of the state to sell or exchange. Military stores may be sold or exchanged. G. S. 13, § 86. 1864, 238, § 87.

SECT. 93. The committee of the legislature on the militia shall annually, in January, visit the arsenal in Cambridge, and make a thorough examination into the condition of the same, of the arms and munitions of war and other property of the state or general government deposited there, and report the condition of the arsenal and property. Arsenal to be visited by committee of legislature. G. S. 13, § 87. 1864, 238, § 88.

ARMORIES.

SECT. 94. The mayor and aldermen and selectmen shall provide for each company of the volunteer militia within the limits of their respective cities or towns a suitable armory, for the deposit and safe keeping of the arms, equipments and other military property furnished it by the state, and for the purposes of squad drill, and shall also provide suitable places for the parade, target practice and company drill of the militia belonging to their respective cities and towns. Cities and towns in which batteries are located are hereby authorized to raise money, by taxation or otherwise, for the purpose of erecting suitable armories. When a company is formed from different places, the location of such armory shall be determined by a majority of its members, subject to the approval of the adjutant-general. Armories to be provided by towns, &c. G. S. 13, § 88. 1864, 238, § 89, 101. 1865, 19, § 5.

SECT. 95. They shall annually, in October or November, transmit to the office of the adjutant-general a certificate, verified by the oath or affirmation of at least two of their board, showing the name of each company furnished with an armory, the amount paid for the rent thereof, and stating that a majority of their board consider such armory necessary for the use of such company, and that the rent charged therefor is —rent, &c., of, to be certified to adjutant-general. G. S. 13, § 89. 1864, 238, § 90.

fair and reasonable, according to the value of real estate in their place.

—claims for
rent of, how
audited and
paid.
G. S. 13, § 90.
1864, 238, §
91.
1867, 266.

SECT. 96. The adjutant-general shall annually examine all certificates so returned to his office, institute any inquiries he deems expedient relative thereto, and allow them in whole or in part, to an amount not exceeding three hundred dollars for one company of infantry, and not exceeding six hundred dollars for one company of artillery or cavalry. He shall, within ten days after such examination, file in the office of the auditor his certificate, stating the sums allowed, the name of the company for whose use each sum is allowed, and the place to which it belongs; and shall thereupon notify the mayor, aldermen or selectmen of the sum allowed to their place, which sum shall be paid upon the warrant of the governor to such mayor and aldermen or selectmen, as provided by law for the re-imbursement of sums paid for military service.

Penalty for
false certifi-
cate.
G. S. 13, § 91.
1864, 238, §
92.

SECT. 97. A city or town receiving from the treasury of the Commonwealth, by reason of a false return or certificate, under section ninety-five, any money to which such place is not entitled, shall forfeit a sum not exceeding four times the amount of money so received.

Armories,
how exam-
ined.
G. S. 13, § 92.
1864, 238, §
93.

SECT. 98. The commander-in-chief may at any time detail an officer to examine any armory and report the condition thereof, and of the arms, equipments and equipage therein deposited.

ORDERS AND NOTIFICATIONS.

Orders, how
distributed.
G. S. 13, § 93.
1864, 238, §
94.
1867, 266.

SECT. 99. Orders from the commander-in-chief shall be distributed by the adjutant-general; division orders and brigade orders by their respective assistant-adjutants-general; regimental and battalion orders by the adjutant; company orders by the clerk or by any non-commissioned officer or private when so required by the commanding officer. General, division, brigade, regimental and battalion orders may, in cases of emergency, be transmitted by telegraph; and all such orders so transmitted shall be deemed to have been legally transmitted within the meaning of this act. When any such order shall be transmitted by telegraph, a copy thereof shall be immediately forwarded by mail.

SECT. 100. When a commander orders out his company for military duty, or for election of officers, he shall order one or more of the non-commissioned officers or privates to notify the men belonging to the company to appear at the time and place appointed. Such non-commissioned officer or private shall give notice of such time and place to every person whom he is ordered to notify; if he fails so to do, he shall forfeit not less than twenty nor more than one hundred dollars, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the Commonwealth.

SECT. 101. No notice shall be legal, unless given by such non-commissioned officer or private to each man verbally, or by delivering to him in person or leaving at his usual place of abode a written or printed order signed by such officer or private, four days at least previous to the time appointed; but in case of invasion, insurrection, riot, or an unforeseen or sudden occasion, a verbal, written or printed notice, however short, shall be legal. When a company is paraded, the commanding officer may verbally notify the men to appear at a future day, not exceeding thirty days from the time of such parade, which shall be sufficient notice as respects the persons present; and all commanders of companies may, on parade, read division, brigade or regimental orders, and notify the soldiers of their several commands to appear as by such orders required; which notice shall be a sufficient warning. Notifications may be proved, as provided in section one hundred and sixty.

SECT. 102. When a company is without commissioned officers, the commander of the regiment or battalion to which it belongs, or the officer detailed by him to discipline the same, shall in writing order any non-commissioned officers or privates to notify the persons liable to do duty in such company, to appear for duty required by law, at the time and place mentioned in such order; and if a non-commissioned officer or private refuses or neglects so to notify, he shall forfeit and pay to the use of his regiment or battalion not less than twenty nor more than one hundred dollars, to be recovered on complaint by the commander thereof.

Companies ordered out, how notified. G. S. 13, § 94. 1864, 238, § 95. 18 Mass. 438. 9 Pick. 41, 557. 10 Pick. 134. 17 Pick. 248. 24 Pick. 172.

Notification, requisites, and times of, how proved, &c. G. S. 13, § 95. 1864, 238, § 95. 15 Pick. 7. 21 Pick. 332. 22 Pick. 406. 23 Pick. 54, 57.

Companies without officers, how notified. G. S. 13, § 96. 1864, 238, § 97.

Orders, &c., to be recorded by clerks. **SECT. 103.** Clerks of companies shall record in the orderly book company orders and notifications; but such record shall not be necessary to the recovery of a penalty.
G. S. 13, § 97.

DISCIPLINE, TRAININGS, INSPECTION AND CAMP DUTY.

System of discipline. **SECT. 104.** The system of discipline and field exercise ordered to be observed by the army of the United States, in the different corps, or such other system as may hereafter be directed for the militia by laws of the United States, shall be observed by the militia.
G. S. 13, § 98.
1864, 238, § 99.

Annual parade by companies for May inspection. Target practice. **SECT. 105.** The volunteer militia shall parade by companies, unless otherwise ordered, annually, on the last Wednesday in May, for inspection, company drill and manœuvre, and also for target practice, and for this purpose the quartermaster-general is hereby authorized to issue upon the requisition of the commanding officers of such companies respectively the necessary
G. S. 13, § 99.
1864, 238, § 100.
1867, 266.

Parade may be by regiments, &c., by order of commander-in-chief. The commander-in-chief may, by general or special orders or regulations, direct that the parade in May of the volunteer militia, or of any portion thereof, be by companies, battalions, regiments or parts of regiments, as he may deem expedient, or as may be directed by the commanding officers of the respective divisions, brigades, regiments or battalions.

Encampments by divisions or brigades. **SECT. 106.** Unless the commander-in-chief prescribes the time, place and manner of assembling the troops for the purposes declared in this section, each commander of division shall annually order an encampment of his division, by brigades or regiments, at some time between the middle of July and the middle of
G. S. 13, § 100.
1864, 238, § 102.
1867, 266.

—orders for, and place of. September. The orders for encampment by brigade shall be promulgated in the brigade thirty days before the time appointed for the encampment; the orders for encampment by regiment shall be promulgated in the regiment twenty days before such time. The place, and if no time is designated by the commander of division, the time of encampment shall be designated by the commander of the troops to be assembled, and regard shall always be had to the convenience, proximity and accommodation of the troops to be assembled; but no ground shall be occupied for an encamp-

ment in time of peace without the consent of the selectmen of the town, or mayor and aldermen of the city, where the encampment is to be made, unless by order of the commander-in-chief.

SECT. 107. No larger body than a brigade shall be ordered to parade at the same time and place except by order of the commander-in-chief.

SECT. 108. Each encampment shall last five days, the troops shall be inspected, reviewed and thoroughly exercised, as companies, battalions or brigades, in the whole routine of camp and field duty.

SECT. 109. Each company roll call shall be made during the term of encampment under the supervision and in presence of a commissioned officer, to be designated by the commanding officer thereof.

SECT. 110. [Repealed.]

SECT. 111. When a company destitute of commissioned officers parades with other troops, the officer in command shall detail one or more commissioned officers present to command it, unless the officer detailed by the commander of the regiment to command it is present.

SECT. 112. The assistant-inspectors-general under the orders of their respective commanding officers, shall attend the annual encampments of the regiments and battalions in their brigades while encamped separately, and, while they are under arms, inspect their arms, uniforms, ammunition and accoutrements.

SECT. 113. By permission of the officer in chief command, and of their own immediate superiors, officers, privates and musicians may drill and manœuvre in camp in undress uniform or fatigue dress, and mounted officers may discharge their duties on foot.

SECT. 114. Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment, (not including a road, so as to prevent passing,) within which no spectator shall enter without leave from such commanding officer. Whoever intrudes within the limits of the parade or encampment, after being forbidden, may be confined under guard during the time of parade or encampment, or a shorter time, at the discretion of the commanding officer; and whoever resists a sentry who attempts to

Parade of more than brigade.
G.S. 13, § 101.
1867, 266.

Encampment to last five days, &c.
G.S. 13, § 102.
1864, 238, § 102.
1867, 266.

—company rolls to be made during term of.
G.S. 13, § 103.
1867, 266.

G.S. 13, § 104.
1867, 266, § 6.
Companies without officers, how commanded.
G.S. 13, § 106.

Assistant inspectors-general to attend reviews, inspect arms, &c.
G.S. 13, § 106.
1867, 266.

Officers and soldiers may drill in camp, &c.
G.S. 13, § 107.

Bounds of parade may be fixed.

Punishment for intrusion.
G.S. 13, § 108.
1864, 238, § 108.
1867, 266.

put him or keep him out of such limits, may be arrested by order of the commanding officer, and carried before a court or magistrate, to be examined or tried upon complaint for such assault or disturbance or breach of the peace.

Persons not
holden to do
duty on days
of certain
elections, ex-
cept, &c.
G.S. 18, § 109.
1864, 238, §
109.

115. No officer or soldier shall be holden to perform military duty except in case of invasion, insurrection, riot or tumult, made or threatened, or in obedience to the orders of the commander-in-chief, on a day appointed for a meeting in the town in which he resides for the election of governor, lieutenant-governor, senators, electors of president and vice-president of the United States, or representatives to congress or the general court; and an officer parading his company, or ordering it to parade contrary to the provisions of this section, shall, besides being liable to a court-martial, forfeit not less than fifty nor more than three hundred dollars.

Governor
may order
escort, &c.
G.S. 18, § 110.
Companies
may have
volunteer
parades, ac-
cording to
articles of
agreement,
&c.
G.S. 18, § 111.
1864, 238, §
110, 160.

SECT. 116. The commander-in-chief may order out any portion of the militia for escort and other duties.

—may own
property,
&c., sue, &c.

SECT. 117. Nothing herein contained shall be construed to prevent any company from meeting for the purpose of drill, funeral or other escort, or a voluntary service, nor to impair the obligation arising under constitutional articles of agreement adopted by the company, so far as regards the members who have signed the same; but such articles of agreement, approved by the commander-in-chief, shall be valid and binding on all who have signed them, unless they are repugnant to law. All fines, penalties and assessments incurred by officers or soldiers of such company, under such constitutional articles of agreement signed by them, and approved by the commander-in-chief, may be collected by such persons, and disposed of in such manner, for the benefit of said companies, as a majority of the members thereof may determine. Volunteer companies shall have the right to own and keep personal property which shall belong to and be under the control of the active members of the company, and the commanding officer of any volunteer company shall have the right and power to maintain any suit at law or in equity in his own name, to recover for the use of the company

any debts or effects belonging to the company, or damages for the injury thereof, and no suit pending in his name shall be abated by his ceasing to be commanding officer of the company, but upon the motion of the commander succeeding him such commander shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him.

SECT. 118. Every non-commissioned officer and private holden by law to do military duty in any company of the volunteer militia, and unnecessarily neglecting to appear at the time and place appointed for such duty, shall forfeit and pay for every such neglect the sums hereinafter mentioned: For unnecessarily neglecting to appear at the inspection on the last Wednesday in May, four dollars; at any encampment or review, five dollars for each day's absence from such encampment or review; at any meeting or parade for escort or other duties ordered by the commander-in-chief, in pursuance of the provisions of the one hundred and sixteenth section of this act, three dollars.

SECT. 119. Every non-commissioned officer or private who appears at a parade or drill required by law, deficient in any arm or article of uniform or equipment furnished him by the state, or with such arms, uniforms or equipments unserviceable or in bad condition, shall forfeit five dollars; and every such officer or private so appearing, deficient in any article of equipment or ammunition furnished to or required of him by law or general order, or with such equipment or ammunition of bad quality or condition, shall forfeit three dollars.

SECT. 120. A soldier who unnecessarily or without order from a superior officer comes to any parade with his musket, rifle or pistol loaded, or loads the same while on parade, or unnecessarily or without order from a superior officer discharges the same when going to, returning from, or upon parade, shall forfeit not less than five nor more than twenty dollars.

SECT. 121. A soldier behaving with contempt towards an officer, or conducting in a disorderly manner, or exciting or joining in a tumult or riot, or being

Penalty for neglecting to appear for duty.

G. S. 18, §§ 99, 102.

1864, 288, § 111.

1867, 266.

—for deficiency in arms, &c.

G. S. 18, § 112.

1864, 288, § 112.

1867, 266.

—for attending parade with musket, &c., loaded, &c.

G. S. 18, § 118.

1864, 288, § 113.

1867, 266.

—for contempt, disorderly conduct, &c.

G.S. 13, § 114. guilty of unmilitary conduct, disobedience of orders or
1864, 238, § neglect of duty when under arms or on duty, shall for-
114. feit not less than ten nor more than forty dollars; and
1865, 250, § the delinquent may be put and kept under guard by
14. the commander of the company, regiment, or of the
field, for a time not extending beyond the time of ser-
vice for which he is ordered out.

—for quit-
ting guard,
&c.
G.S. 13, § 115. SECT. 122. A soldier quitting his guard, section,
1864, 238, § platoon or company, shall forfeit not less than two nor
115. more than ten dollars.

Soldiers may
be put under
guard and
non-commis-
sioned offi-
cers reduced
to ranks.
G.S. 13, § 116. SECT. 123. For any offence mentioned in the pre-
1864, 238, § ceding section, the delinquent may be put and kept
118. under guard by the commander of the company, regi-
ment, or of the field, for a time not extending beyond
the term of service for which he is then ordered. A
non-commissioned officer, for an offence mentioned in
this chapter, or for disobedience of orders or unmilitary
conduct at a regimental or battalion parade, may,
besides incurring the fine prescribed, be reduced to the
ranks by the commander of his regiment or battalion;
and for such misconduct at any other parade, by such
commander, with the advice of his company com-
mander.

Penalties
when com-
panies are
without offi-
cers.
G.S. 13, § 117. SECT. 124. Soldiers in companies without officers,
1867, 266. when ordered out to be trained and disciplined, shall,
for absence, deficiency, misconduct or neglect, be liable
to the fines prescribed for offences in other companies,
to be recovered upon complaint of the officer so detailed,
substantially as by clerks under section one hundred
and sixty, one-half to the use of such officer and one-
half to the use of the Commonwealth. For any
offence mentioned in this and the six preceding sections,
the offender shall be carried before the judge-advocate
of the division or brigade, if present on the field, with-
out unnecessary delay, and a trial of such offence had
before such officer, who shall have concurrent jurisdic-
tion with other magistrates of the cause and person.
All the proceedings incident to such trial, with right of
appeal, shall be the same as those in like cases before
trial justices, but no warrant need be issued to bring
the offender before the judge-advocate.

ROSTERS, ORDERLY BOOKS, ROLLS AND RETURNS.

SECT. 125. The assistant adjutants-general of each division and brigade, and the adjutant of each regiment, battalion or corps, shall constantly keep a correct roster of the command to which he belongs, and an orderly book in which he shall record orders received and issued.

Roster and orderly book, by whom kept.
G. S. 13, § 118.
1864, 238, § 119.
1867, 266.

SECT. 126. A fair and exact roll of each company shall be kept by the clerk, under the direction of the commander, with the state of the arms and equipments furnished to each man, in the form prescribed for the returns of the militia by the commander-in-chief. Such rolls shall be annually revised in the month of May, and corrected from time to time, as the state of the company and alterations in it may require.

Company rolls, how kept. To be revised and corrected.
G. S. 13, § 119.
22 Pick. 406.
23 Pick. 54, 208.

SECT. 127. An orderly book shall also be kept in each company, by the clerk, under the direction of the commander, and the proceedings of the company, orders received and issued, and exact details of drafts and detachments shall be recorded therein. Fines and forfeitures, with the time when, and the offence, neglect, default or deficiency, for which they were incurred, money collected by him with the names of the persons from whom collected, and all delinquencies and deficiencies, shall be recorded in said book, which shall not be alienated from the company, and shall always be open to the inspection of its officers.

Orderly book, how kept.
G. S. 13, § 120.
1864, 238, § 122, 123.
23 Pick. 54, 208.
Delinquencies, fines, &c., to be recorded.

SECT. 128. At the conclusion of each tour of camp duty, commanders of companies shall make correct triplicate returns of their several companies, which shall certify the manner in which such company, on each of the days of encampment, performed the duties required by law. He shall deliver one of such returns to the inspecting officer on duty in camp, and another to the commander of his regiment or battalion, and send the third direct to the adjutant-general within ten days after said tour of camp duty. The returns of companies attached to divisions or brigades, and not to regiments, shall be sent to the commanding officers of divisions or brigades respectively, and consolidated and transmitted by them to the adjutant-general.

Commanders of companies to make triplicate returns after camp duties.
G. S. 13, § 121.
1864, 238, § 124.
1867, 266.

—to make alphabetical pay rolls of companies. G.S. 13, § 122. 1864, 238, § 125.

SECT. 129. The commander of a company, within ten days after each tour of camp duty, shall make a correct alphabetical pay roll of his company, containing the names of the members who appeared, armed, uniformed and equipped, and performed all the duties required on the days of encampment, and showing the duty done by each member, and transmit the same, certified under his oath to be correct and true, to the adjutant-general. Such roll shall not contain the name of a private who has done duty as a musician, and the whole number so returned shall in no case exceed the number allowed to his company by sections fourteen and twenty-seven.

—penalty on, for neglect, or false return, &c. G.S. 13, § 123. 1864, 238, § 126. 2 Met. 296.

SECT. 130. A commanding officer of a company who neglects to make the returns required by the two preceding sections, shall forfeit twenty-five dollars, and for making a false return in any case, shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Returns by master of regimental and battalion band. G.S. 13, § 124. 1867, 266.

SECT. 131. The master of every regimental or battalion band shall, within ten days after a parade thereof, made under order of the commander of the regiment or battalion to which such band belongs, make and transmit to the adjutant-general an alphabetical list of the men who appeared in uniform and performed duty on such day, the last return to be made on or before the tenth day of November; upon which the commanding officer to whom the band was ordered to report for duty shall certify the manner in which said duty was performed. For neglect to make such return the master shall forfeit twenty-five dollars, and for making a false return shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Commanders of regiments, &c., to make returns to officers.

SECT. 132. On the last day of each tour of camp duty, commanders of regiments and battalions shall make correct certified rolls of the field and staff officers of their several commands on duty for each day, specifying the names, rank and duty done by each officer who appeared armed, uniformed and equipped on any day, and deliver the same to the inspecting officer of the camp, and every commanding officer of regiment or battalion shall, within ten days after each tour of camp

duty, forward to his commander a consolidated return of his whole command. Every officer neglecting to make such returns shall forfeit for each offence fifty dollars, and for making a false return in any case two hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Penalties.
G.S. 13, § 125.
1867, 266.

SECT. 133. Assistant adjutants-general within twenty days after each tour of camp duty done by their respective brigades, or the regiments or battalions thereof, shall make and transmit to the commander of the brigade a correct return of such brigades, reporting therein the condition of the uniforms, arms, accoutrements and ammunition of the several corps, with such suggestions relating to the government of the militia and the advancement of order and discipline as in his judgment may be required; and also in like manner make and transmit to the commander of division a certified roll of the general, field and staff officers of their several brigades, specifying the rank of and duty done by each one who appeared uniformed and equipped and performed duty on any day. For neglect to make either of said returns each assistant adjutant-general shall forfeit seventy-five dollars, and for making false return in any case three hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Assistant adjutants-general to make returns of brigade, and field, and staff officers, &c.
G.S. 13, § 126.
1864, 238, § 126.
1867, 266.

Penalties.
1867, 266.

SECT. 134. Commanders of brigades shall within thirty days after each tour of camp duty performed by the troops under their respective commands, transmit to the commanders of their divisions a correct return of their respective brigades, as furnished by the assistant adjutants-general under the preceding section. Commanders of divisions shall within ten days after the receipt of such returns of brigades under their respective commands, transmit to the adjutant-general correct returns of the state of their divisions, as derived from such brigade returns. Each officer, for neglect to make the returns required of him under this section, shall forfeit for each offence one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Commanders of brigades to make returns to commanders of divisions, and they to adjutant-general.
G.S. 13, § 127.
1864, 238, § 127.
1867, 266.

Penalties.

SECT. 135. Commanders of divisions shall annually, on or before the first day of December, make and transmit to the adjutant-general a certified roll of the

Roll of officers to be made out, &c., by com-

manders of general, field and staff officers in their respective divisions, specifying the name, rank, duty done by each one who has appeared armed, uniformed and equipped, and performed duty on any day. For neglect to make such return, such commander shall forfeit one hundred dollars, and for making a false return in any case five hundred dollars, to be prosecuted for by the officer to whom the return should be made.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULT OR RIOTS.

SECT. 136. When an invasion of or insurrection in the state is made or threatened, the commander-in-chief shall call upon the militia to repel or suppress the same; and may order out divisions, brigades, regiments, battalions or companies; or may order to be detached parts or companies thereof, or any number of men to be drafted therefrom, and may cause officers to be detailed, sufficient, with those attached to the troops, to organize the forces. If such invasion or insurrection, or imminent danger thereof, in any part of the state, is so sudden that the commander-in-chief cannot be informed and his orders received and executed in season to resist or suppress the same, a commander of division in such part of the state may order out his division, or any part thereof, as the commander-in-chief might do.

SECT. 137. When a draft from the militia is ordered, the non-commissioned officers and privates, except so many as offer to serve voluntarily, shall be drafted by lot from the company, and the officers regularly detailed from the roster.

SECT. 138. If a company without officers is ordered to march, or a draft or detachment is ordered therefrom, the commander of the regiment or battalion shall detail an officer to command, who shall have the same authority to order them to appear, to command them in the field, or to make a draft or detachment therefrom, as the captain of such company would have, and shall be under the same responsibility.

SECT. 139. Every person so ordered out, detached or drafted, who does not appear according to law at the appointed time and place, or provide a substitute, or

Militia, how called out in case of invasion or insurrection.
G.S. 13, § 129.
8 Mass. 549.

Drafts and detail of officers.
G.S. 13, § 130.

If company, &c., without officers, is called out, officer to be detailed.
G.S. 13, § 131.

Soldiers neglecting to appear, penalty.

within twenty-four hours pay to the captain of his company, or officer to whom he is ordered to report, one hundred dollars, to be paid into the treasury of the Commonwealth, shall be taken to be a soldier absent without leave. G.S. 13, § 132. 1867, 266.

SECT. 140. The selectmen of a town and the mayor and aldermen of a city to which men so ordered out, detached or drafted, belong, when required in writing by a commander of a regiment or detachment, shall provide carriages to attend them with further supplies of provisions and to carry necessary baggage, and provide necessary camp equipage and utensils, until notified by the commanding officer to desist; and shall present their accounts as provided in section one hundred and fifty-five. For any neglect by such mayor and aldermen or selectmen, under this section, such city or town shall forfeit, to the use of the Commonwealth, not less than twenty nor more than five hundred dollars. The officer to whom any articles above mentioned are delivered shall be responsible that care is taken of the same. Selectmen, &c., to provide carriages, &c., in certain cases. Penalty. G.S. 13, § 133. 1864, 238, § 136.

SECT. 141. When there is in any county a tumult, riot, mob, or a body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the Commonwealth, or when such tumult, riot or mob is threatened, and the fact is made to appear to the commander-in-chief, or the mayor of a city, or to a court of record sitting in said county, or if no such court is sitting therein, then to a justice of said court, or if no such justice is within the county, then to the sheriff thereof, the commander-in-chief may issue his order, or such mayor, court, justice or sheriff may issue a precept, directed to any commander of a division, brigade, regiment, battalion or company, directing him to order his command, or a part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and supporting the laws; which precept, if issued by a court, shall be in substance as follows: Troops, how ordered out in case of riot, &c. G.S. 13, § 134. 1864, 238, § 137. 5 Gray, 121. 1867, 266.

Form of
requisition.

_____, ss.

COMMONWEALTH OF MASSACHUSETTS.

L. S.

To (insert the officer's title) A B, commanding, (insert his command.)

Whereas it has been made to appear to our justices of our
now holden at _____, within and for the county of _____, that,
(here state one or more of the causes above mentioned,) in our county
of _____, and that military force is necessary to aid the civil author-
ity in suppressing the same; now therefore, we command you that
you cause, (here state the number and kind of troops required,) armed,
equipped, and with ammunition, as the law directs, and with proper
officers, either attached to the troops, or detailed by you, to parade
at _____, on _____, then and there to obey such orders as may be
given them, according to law. Hereof fail not at your peril, and
have you there this writ, with your doings returned thereon.

Witness L S, Esq., at _____, on the _____ day of _____ in
the year _____ C D, Clerk.

And if the same is issued by a mayor, justice or
sheriff, it shall be under his hand and seal, and other-
wise varied to suit the circumstances of the case.

Penalties for
disobedience,
&c.
G.S. 13, § 135.
1864, 238, §
138.
1867, 266.

SECT. 142. The officer to whom the order of the
commander-in-chief or such precept is directed, shall
forthwith order the troops therein mentioned to parade
at the time and place appointed. If he refuses or neg-
lects to obey such order or precept, or if an officer neg-
lects or refuses to obey an order issued in pursuance
thereof, he shall be cashiered and punished by fine or
imprisonment not exceeding six months, as a court-mar-
tial may adjudge. Any person neglecting or refusing
to appear at the place of parade to obey an order issued
in such case, or any person advising or endeavoring to
persuade another to refuse or neglect to appear at such
place, or to obey such order, shall forfeit, to the use of
the Commonwealth, five hundred dollars.

Troops to ap-
pear armed,
&c.
G.S. 13, § 136.
1864, 238, §
139.

SECT. 143. Such troops shall appear at the time
and place appointed, armed and equipped, and with
ammunition as for inspection of arms, and shall obey
and execute such orders as they may then and there
receive according to law.

COMPENSATION.

Pay of gen-
eral, field,
and staff off-
icers.
G.S. 13, § 137.
1864, 238, §
143.
1865, 250, § 5.
1867, 266.

SECT. 144. General, field and commissioned staff
officers except staff officers of companies, shall receive
for each day's duty in camp, and according to six
returns of the inspecting officers of encampment, six
dollars, and non-commissioned staff officers, except non-
commissioned staff officers of companies, three dollars a

day, to be paid them from the state treasury, upon the warrant of the governor and council according to a pay roll made up in the office of the adjutant-general. And for each day's duty performed by such officers respectively under the order of the commander-in-chief, in pursuance of section one hundred and sixteen, said officers shall severally be allowed and paid the same compensation as is above provided for a day's duty in camp. Whenever the commander-in-chief shall, by general or special orders or regulations, direct that companies shall parade or drill by regiments or battalions instead of by companies, according to the provisions of section one hundred and five of this act, such regimental or battalion field and staff officers shall be allowed and paid therefor the same compensation as is allowed to company officers for the same service under the provisions of section one hundred and forty-six.

SECT. 145. Assistant adjutants-general of divisions and brigades, and adjutants of regiments or battalions, of volunteer militia, shall receive twenty-five dollars annually, in addition to their pay as herein provided.

—of inspectors, &c.
G.S. 13, § 188.
1864, 238, § 144.
1867, 266.

SECT. 146. Every other commissioned officer of the volunteer militia shall receive for each day's duty in camp, three dollars; for the duty required to be performed on the last Wednesday in May, two dollars and fifty cents; and for each day's duty performed under the order of the commander-in-chief in pursuance of the provisions of section one hundred and sixteen of this act, two dollars and fifty cents. Every non-commissioned officer and soldier shall receive for each day's duty in camp, two dollars and fifty cents; for the duty required to be performed on the last Wednesday in May, two dollars; for each day's duty performed under the orders of the commander-in-chief, in pursuance of the provisions of section one hundred and sixteen of this act, two dollars. Every member of a regimental or battalion band shall receive for services, in obedience to an order of his regimental or battalion commander, at the rate of five dollars a day while on duty. For the duty required to be performed on the last Wednesday in May, and for each day's duty in camp as required by the provisions of this act; and also for each day of

—of other officers and soldiers.
G.S. 13, § 189.
1864, 238, § 145.
2 Met. 296.
4 Gray 601.
1867, 266.

—of members of bands for special duty, &c.

Computation and pay roll. Returns, &c., and payment.

special duty performed under the orders of the commander-in-chief, issued in pursuance of the provisions of section one hundred and sixteen, every mounted officer and non-commissioned officer and every member of a mounted company or band shall receive five dollars a day in addition to the compensation herein before provided, which shall include keeping and forage for horses.

Such sums shall be computed by the adjutant-general on the company and band pay rolls, made out, certified and returned under sections one hundred and twenty-eight, one hundred and twenty-nine and one hundred and thirty-one. After such computation, such pay rolls shall be transmitted to the mayor and aldermen of the cities and the selectmen of the towns in which such companies and bands are situated, as provided in section sixty-three. Upon receipt of the same, the mayor and aldermen, and selectmen, shall draw their warrants upon their respective treasurers, directing them to pay forthwith the amount due to the persons named in such rolls; and shall, annually, on or before the first day of December, under a penalty of thirty dollars for neglect in so doing, remit such rolls to the adjutant-general, with a certificate indorsed thereon, setting forth that a warrant has by them been drawn on their respective treasurers, in favor of the several persons whose names are recorded therein. Thereupon the adjutant-general shall lay the same, together with his roll, prepared under section sixty-four, of general, field and staff officers entitled to pay, before the auditor, and the governor may draw his warrant on the treasury for such sums as may be necessary to pay such officers and reimburse such cities and towns. The treasurer of each city and town shall annually, on or before the thirty-first day of December, pay into the treasury of the Commonwealth all sums so drawn for the payment of military services which shall then remain unpaid to the person performing the service. Any neglect to pay over such unpaid moneys by such treasurers shall be punished by a fine double the amount remaining unpaid in each case.

Pay forfeited for deficiency in returns.

SECT. 147. The compensation provided in the preceding section shall be forfeited for default in making the returns required by sections one hundred and

twenty-eight, one hundred and twenty-nine and one hundred and thirty-one; and no person shall receive compensation who does not remain in camp and perform all duties required during the period of encampment; except that a person who once appears and is excused from further duty shall be entitled to compensation for the time he is actually engaged in service.

—for non-performance of full duty, except, &c. G. S. 13, § 140. 1864, 238, § 146.

SECT. 148. No officer or soldier in the volunteer militia shall receive the compensation provided in this chapter, unless he personally performs the duties required by law; nor shall excuses granted for absence from or non-performance of military duty entitle the person excused to receive such compensation.

Personal service requisite for compensation. G. S. 13, § 141. 1864, 238, § 147.

SECT. 149. The adjutant-general shall present his account for expenses incurred in the performance of his duty as inspector-general to the auditor of accounts for allowance.

Expenses of inspector-general. G. S. 13, § 142.

SECT. 150. When a detachment is ordered on special duty, by the commander-in-chief, or under section one hundred and forty-one, each member shall receive two dollars and fifty cents a day while in the performance of such duty, and four cents a mile for travel.

Pay for special duty. G. S. 13, § 144. 1864, 238, § 148.

SECT. 151. Officers obliged to go out of the city or town of their residence to attend a military election, shall be allowed ten cents a mile each way for travel.

—officers attending elections. G. S. 13, § 145.

SECT. 152. Officers composing courts-martial, courts of inquiry and military boards, and witnesses attending before them, shall receive five cents for every mile they necessarily travel in going to and returning from the place of trial, and the following sums for each day of attendance: The president of a court-martial, court of inquiry or military board, three dollars. The judge-advocate of the same, four dollars; which shall be in full compensation also for all services of preparing papers before and making copies after any trial, inquiry or investigation. The marshal and other members of such court or board, two dollars and fifty cents. Each witness attending on such court or board, one dollar and seventy-five cents. Fees for subpoenas and service of them shall be the same as in civil cases. No allowance shall be made for pay or rations for a military guard, unless such guard is ordered by the officer

—of members, &c., of courts-martial. G. S. 13, § 146. 1864, 238, § 150.

—not allowed for guard, except, &c.

appointing the court; nor shall the above compensation be made to officers in actual service and receiving pay..

Relief to soldiers, &c., disabled, &c.
G.S. 13, § 147.
1864, 238, § 151.

SECT. 153. If an officer or soldier is wounded or otherwise disabled, or is killed or dies of wounds received while doing military duty, he, his widow or children, shall receive from the general court just and reasonable relief.

Pay of troops in actual service.
G.S. 13, § 148.
1864, 238, § 152.

SECT. 154. The militia while in actual service shall receive the same pay and rations as the regular troops of the United States; and the rations when commuted shall be valued at the rate fixed by the regulations of the United States army in force at the time. When the militia are discharged from actual service, they shall be allowed pay and rations to their respective homes.

Military accounts, how examined, certified, and paid.
G.S. 13, § 149.
1864, 238, § 153.

SECT. 155. All military accounts, including claims against the state for money expended in the transmission of military documents to and from the department of the adjutant-general; unless it is otherwise specially provided by law, shall annually, on or before the fifth day of January, be transmitted to the adjutant-general and examined, and if found correct, certified by him. They shall then, unless it is otherwise specially provided by law, be presented to the state auditor for allowance, and upon such allowance certified by him to the governor, shall be paid to the persons to whom they are personally due, or to their order, at the treasury of the Commonwealth. And no military account shall be certified by the adjutant-general or allowed by the auditor, unless presented to the adjutant-general for allowance within the time prescribed by law.

EXCUSES.

Excuses to be made within twenty days, unless, &c.
G.S. 13, § 150.
1864, 238, § 154, 156.

SECT. 156. Excuses for the non-appearance of a soldier shall be made to the commanding officer of his company, or the officer detailed to train and discipline the company, under section thirty, within twenty days after a training or other military duty from which he has been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, such officer may excuse him, with the approval of the commander of the regiment; but no such officer shall receive an

excuse for non-appearance after the expiration of the twenty days. No excuse shall avail such soldier, on a prosecution for the recovery of a fine or forfeiture, unless proved to have been made to such officer before the expiration of the twenty days, unless the delinquent satisfies the court or justice before whom the case is tried that it was not in his power to make such excuse within the time. Such officers shall inform their clerks of all excuses allowed for non-appearance.

SECT. 157. No commanders of companies shall receive excuses for deficiencies of equipment.

SECT. 158. When a person is entitled to exemption from military duty, upon presenting evidence of the cause of his exemption to his commanding officer within or before a certain time, as provided in sections ten, eleven and twelve, and omits so to present such evidence, it shall not avail him by way of excuse upon a prosecution for a particular absence or default, unless he makes his excuse to the commanding officer within twenty days after the training, or satisfies the court or justice it was not in his power to make such excuse within the time.

Clerk to be informed of excuses.

—deficiencies of equipment.

G.S. 13, § 151.

—not to be received of

conditional

exempts, un-

less, &c.

G.S. 13, § 152.

1864, 238, §

158.

11 Mass. 456.

17 Mass. 51.

PROSECUTIONS FOR FINES.

SECT. 159. All fines and forfeitures incurred by non-commissioned officers and soldiers of the volunteer militia, under the provisions of sections one hundred and eighteen to one hundred and twenty-three, inclusive, may be recovered on complaint of the clerk of the company to which such non-commissioned officers and soldiers respectively belong; and said clerk may retain for his own use one-half the amount so recovered, and shall pay the other half thereof into the treasury of the Commonwealth within six months after he shall have received the same. And any clerk who shall wilfully neglect or fail to make such payment, as aforesaid, shall be deemed to have been guilty of the crime of embezzlement, and shall be punished accordingly.

Fines and

forfeitures,

how recover-

ed and dis-

posed of.

G.S. 13, § 153.

1864, 238, §

161, 168.

SECT. 160. The clerk of each company, after the expiration of twenty days and within forty days after the day on which a fine is incurred, shall, in those cases where fines are to be collected upon his complaint, make

—prosecu-

tion for.

1 Mass. 443.

4 Mass. 239.

376, 556, 670.

5 Mass. 406.

11 Mass. 456. and subscribe an information against the offending sol-
 12 Mass. 271. diers who have not been excused by the commander of
 1 Pick. 468. the company, with the approval of the commander of
 3 Pick. 263. the regiment, under section one hundred and fifty-six,
 6 Pick. 189. or who have not within the twenty days aforesaid paid
 11 Pick. 355. to him the forfeitures they have incurred; which infor-
 15 Pick. 170. mation shall be left with some justice of the peace, or
 16 Pick. 84. filed in some police court in the county in which the
 19 Pick. 376, offender resides. Such information shall be in sub-
 530. stance as follows:
 21 Pick. 330.
 23 Pick. 54,
 208.
 24 Pick. 172.
 1 Met. 148.

Form of information. To A B, Esq., justice of the peace within and for the county of
 , or to the justice of the police court within and

for

I, the subscriber, clerk of the company commanded by
 do hereby give information against the following person [or persons]
 who, being duly enrolled in said company, and being duly notified
 to meet with said company, on the day of , in the
 year , [for inspection or review, election of officers, special
 duty, or as the case may be] was guilty of the offences and did incur
 the forfeiture set against his name:

| Names. | Offences. | Forfeitures. | Sums. |
|--|--|--------------|---------------|
| A B, non-com- officer; C D, private, . . . | { For unnecessarily neglecting to appear on said day, . . . | { | has forfeited |
| E F, | { For being deficient of a on said day, | { | has forfeited |
| G H, | { For being on said day guilty of coming on to the parade with his arms loaded, | { | has forfeited |
| I K, | { For unnecessarily discharging his musket, [rifle or pistol] in going to, [or returning from or on the place of] parade, without the orders of an officer, | { | has forfeited |
| L M, | { For leaving his guard, [section, platoon or company] without the leave of an officer. | { | has forfeited |

[And in the same manner, substantially, all other offences are to be set forth against offending non-commissioned officers and privates.]

I, therefore, agreeably to my oath of office, and in compliance with the requisitions of the law in this behalf, request you to issue a summons, directed to the person named in the above information, to appear before you, and show cause, if any he has, why it should not be adjudged that he pay the forfeiture set against his name, for the offence which he is therein alleged to have committed.

Dated at , this day of , in the year

A B, clerk of the company commanded by

Summons to
be issued
within nine

The justice or court shall file the same; and, upon motion of the clerk, shall, within nine months and not

afterwards, issue a summons to each person informed against, to be served at least seven days before the time appointed for showing cause. The summons, if issued by a justice of the peace, shall be in substance as follows :

ss.
[Seal.] To the sheriff of said _____ county, or either of his deputies, or either of the constables of the town of _____, in the county aforesaid, greeting: Form of summons issued by justice.

In the name of the Commonwealth of Massachusetts, you are hereby required to summon C D, of _____, in the county aforesaid, to appear before me, E F, one of the justices of the peace for the county aforesaid, at _____, in _____, on the _____ day of _____, at _____ of the clock in the _____ noon, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited _____, for [here insert the offence, and the time when and place where it was committed.] Hereof fail not, and make due return of this writ and your doings thereon, unto myself, on or before the said hour of the day of _____

Dated at _____ aforesaid, the _____ day of _____, in the year _____
E F, Justice of the Peace.

If issued from a police court, as follows :

ss. THE COMMONWEALTH OF MASSACHUSETTS. Form of summons issued by police court.
[Seal.] To the sheriff of the county of _____ or either of his deputies, or either of the constables of the town of _____ in said county, greeting:

We command you to summon C D, of _____ in said county, to appear before our justices of our police court, to be holden at _____ within and for our _____ on _____, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited _____ for [here insert the offence, and the time and place where it was committed.] Hereof fail not, and have you there this writ, with your doings thereon.

• Witness W S, Esq., at _____ on the _____ day of _____ in the _____ year _____ T P, Clerk.
[or witness my hand and seal at _____ on the _____ day of _____ in the year of our Lord _____ A B, Justice of said Court.]

When the person summoned appears, he may plead that he is not guilty, and give any special matter in evidence. Plea of defendant.

Upon the trial of such complaint, made by the clerk of a company, it shall be sufficient for the complainant to prove that he is the clerk of the company; for which purpose he shall produce his warrant as a non-commissioned officer, and prove the signature thereto of the colonel or commanding officer of the regiment or bat- What complainant must prove.

talion, and that at the time of signing such warrant he was reputed to be and acted as such colonel or commanding officer; which shall be *prima facie* evidence that such complainant was appointed a non-commissioned officer by the captain or commanding officer of such company, and that a legal return of such appointment was made to the colonel or commanding officer of the regiment.

Complainant to show appointment and qualification.
5 Pick. 239.
8 Pick. 448.
15 Pick. 446.

He shall then show, upon the back of his warrant, a legal certificate of his appointment as clerk, and qualification as such by taking the oaths required by law. For which purpose he shall prove the signature of the captain or commanding officer of such company, and that he is such captain or commanding officer, by producing his commission as such; but if the clerk is appointed clerk *pro tempore*, his appointment may be proved by the records of the company.

—to produce roll, and prove enlistment.

He shall then produce the roll of the company, and prove that the defendant was enrolled or enlisted therein at the time he was notified of such meeting.

—and the order to notify meeting.

He shall then produce the order of the commanding officer of such company to notify the said meeting or meetings thereof, and prove his signature thereto, and that the defendant was legally notified of the time and place of such meeting or meetings.

—to prove order when required to be given by superior officer.

If it is required by law that the order for such military duty shall in such case be given by any officer superior to the commanding officer of a company, then the orders of such superior officer, and all intermediate orders of officers transmitting the same to the commanding officer of the company, shall be proved, and that the persons purporting by said orders to be such officers are such; for which purpose it shall be sufficient to produce the transmitted written or printed copies of such orders, and the regimental, battalion or other last order, transmitting the same to the commanding officer of the company; to prove the signature of the proper officer to such regimental, battalion or other last order, transmitting the same; and to prove that all the officers above mentioned are reputed to be such officers and act as such.

The absence or offence of the defendant shall then be proved, to show that he is liable to the fine alleged to be incurred by him; and, in case of absence, the burden of proof shall be upon him to show that his absence was necessary. The evidence above described shall be taken to be *prima facie* sufficient to support the complaint.

—to prove
offence.

Burden of
proof.

When it appears that a document or paper above mentioned cannot be produced, satisfactory secondary evidence thereof shall be received.

Secondary
evidence.

Upon the hearing of such case the testimony of the clerk, or other person who was ordered to notify the whole or part of the company, shall be *prima facie* evidence of notice to the defendant, and that he neglected to appear.

Clerk, &c.,
may be wit-
ness.
4 Pick. 251.
15 Pick. 170.

The certificate of the surgeon or assistant-surgeon of the regiment that the defendant was unable to perform military duty at the time of his absence, shall be *prima facie* evidence that he ought to be excused for a particular absence, if the provisions of section one hundred and fifty-six have been complied with; but any permanent disability which renders the enrolment of the defendant illegal, or such temporary excuse, may be proved by parol.

Exemptions
for infirmity,
how proved.

The commanding officer of a company may be a witness to prove any fact whatever.

Command-
ing officer a
witness.

If the defendant makes default, or judgment is rendered against him, and he neglects for two days after to satisfy the same, with legal costs, execution shall be issued therefor; which execution, issued by a justice of the peace, shall be in substance as follows, but if by a police court, shall be so altered as to conform to the summons:

Execution,
when issued.

— ss.

THE COMMONWEALTH OF MASSACHUSETTS.

—form of.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of _____, in the same county, greeting:

Whereas E L, clerk of the company commanded by _____, in said county, on the _____ day of _____, before J D, Esq., one of our justices of the peace for our county aforesaid, recovered judgment against T P, of _____, for the sum of _____ fine or forfeiture, and _____ costs of prosecution, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of

the money of the said T P, or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied, unto the said E L, the aforesaid sums, being in the whole; and also, out of the money, goods and chattels of the said T P, you levy twenty-five cents more for this writ, together with your own fees; and for want of such money, goods or chattels of said T P, to be by him shown unto you, or found within your precinct, to the acceptance of the said E L, for the aforesaid sums, we command you to take the body of the said T P, and him commit unto our jail in B, and we command the keeper thereof accordingly to receive the said T P into our said jail, and him safely keep, until he pay the full sums above mentioned, with your fees, or that he be discharged by the said E L, or otherwise, by order of law. Hereof fail not, and make return of your doings therein unto our said justice, within twenty days next coming.

Witness our said justice at B, the day of , in the year one thousand

J D, Justice of the Peace.

Amend-
ments.

Continu-
ance.

Liability of
complainant
for costs.

Appeal.

Complaints
by other
officers, how
prosecuted.

Imprison-
ment on ex-
ecution.
G.S. 13, § 155.
1884, 238, §
162.

The complaint or summons may be amended in any stage of the proceedings without payment of costs; and the defendant shall be allowed an adjournment or continuance of the case, if justice requires it. The clerk shall not be liable to pay costs to a defendant in a case in which the commanding officer of his company has certified, upon the information of the clerk, his approval of the same. And no appeal shall be allowed from any such judgment, unless the forfeiture adjudged exceeds ten dollars exclusive of costs.

A complaint by any other officer shall be prosecuted in the like manner so far as the same is applicable thereto, the forms being varied accordingly; and he shall prove his authority by producing his commission and other competent evidence which may be necessary.

SECT. 161. No person shall be imprisoned upon an execution issued upon a complaint and judgment described in the preceding section, for a longer time than six days; but shall at the expiration of that time be discharged by the keeper of the jail to which he is committed. The judgment debtor shall remain liable for the amount of the judgment and the costs of imprisonment; and execution for the whole of the same may be sued out against the property of such debtor.

BOARDS OF OFFICERS.

Military
board of ex-
aminers,

SECT. 162. The commander-in-chief may, from time to time, and at any time, appoint a military board of

examiners of not less than three nor more than five ^{their duty, &c.} officers, whose duty it shall be to examine the capacity, qualifications, propriety of conduct and efficiency of any commissioned officer under the rank of major-general, who may be reported to them as a fit subject for examination, and upon the report of such board, if adverse to such officer and approved by the commander-in-chief, the commission of such officer shall be vacated: *provided, always*, that if practicable, two members at least of such board shall be of military rank at least equal to that of the officer to be examined. The commander-in-chief may also, when in his opinion it is necessary, call boards of officers for settling military questions, or for other purposes relative to good order and discipline. ^{—of officers, for settling military questions. G.S. 13, § 163. 1864, 238, §§ 57, 170.}

COURTS-MARTIAL.

SECT. 163. All complaints upon which courts-martial are ordered shall be in writing and signed by the complainant, and shall clearly specify the offence, and the time when and the place where it was committed. No officer shall be tried by court-martial for an offence committed more than one year before the complaint, unless his absence or other manifest impediment has prevented a complaint within that time; nor on a charge preferred by a soldier, unless for an offence committed while in the actual service of the state or of the United States, nor unless such charge is preferred before such soldier has left the service. ^{Complaints on which courts-martial are ordered. —trial within a year. Charges. G.S. 13, § 157. 5 Wheat. 22.}

SECT. 164. Every officer to be tried by court-martial shall be put under arrest. The judge-advocate shall deliver to the accused a copy of the charges against him, and a notice of the time and place of trial, ten days at least before the day of trial; and if he objects, and the court is satisfied that he has not received the same, they shall adjourn, so as to allow the time required to elapse after the delivery of the notice and copies. ^{Respondent to be arrested, to have copy of charges, &c. Adjournment. G.S. 13, § 157.}

SECT. 165. Courts-martial shall consist of a president, judge-advocate, not more than four nor less than three members, present at the organization of the court, and a marshal; and shall be holden between the first ^{Courts-martial, of whom to consist; when held; how often.}

day of December and the last day of March, in the daytime. There shall be only one general and one division court-martial in one division in one year.

—general, by whom appointed, and whom to try.

General courts-martial shall be appointed for the trial of all officers above the rank of captain by the orders of the commander-in-chief, issued to the divisions which in his opinion can most conveniently furnish members for the same; and he shall appoint a president, not below the rank of brigadier-general, and a marshal of said court.

—division.

Division courts-martial shall be appointed for the trial of officers of and under the rank of captain, by the orders of each commanding officer of a division, in his own division, issued to the brigades, regiments, battalions and companies which in his opinion can most conveniently furnish members for the same; and he shall appoint a president, of the rank of colonel or lieutenant-colonel, and a marshal.

—members of, how and by whom detailed.

Officers shall be detailed to sit upon courts-martial in manner following: major-general by the commander-in-chief, from the general roster; brigadier-generals and officers of any divisionary corps by the commanding officers of divisions, from the division roster; colonels, lieutenant-colonels and majors, and officers of any company attached to a brigade, by the commanding officers of brigades, from the brigade roster; captains and subalterns by the commanding officers of regiments, battalions and other separate corps. And when it appears that an officer detailed or to be detailed is, or will be for some sufficient cause unable to serve on a court-martial, the officer detailing him, having satisfactory evidence thereof, shall certify such inability to the officer ordering the court-martial, and shall at the same time detail the officer next in rotation on the roster.

Provision in case any officer detailed cannot serve.

No one superior in rank to president to be detailed.

Detailing officer to make return.

Judge-advocate to attend.

No senior officer, or superior in rank to the president, shall be detailed. The officers ordered to detail members shall make returns forthwith to the officer appointing the court, who shall transmit the same to the judge-advocate.

The judge-advocate of each division shall, when ordered, attend general and division courts-martial within his division; but when he is prevented by inab-

ility or legal impediment, the officer ordering the court-martial shall appoint some person to be judge-advocate to the same. —when unable to attend.

If the officer appointed president does not appear at the opening of the court, the officer highest in rank present shall be president. If presiding officer does not attend.

When it is found that by reason of absence, challenge or other cause, the number of members of a general or division court-martial, (beside the president,) qualified to act is less than three, the court shall adjourn for a suitable time; and the president shall forthwith notify the fact to the commanding officer of the division in which such general or division court-martial is held; and such commanding officer shall himself detail from the division a number of officers of the same rank as those before detailed, sufficient to complete the court. If sufficient number of members do not attend, or are not qualified.

If no judge-advocate or marshal attends at the opening of the court, the president shall appoint a judge-advocate or marshal, which appointment shall be entered on the record and signed by him. The judge-advocate acting at the commencement of a trial shall serve during the trial, notwithstanding the attendance or appointment of any other person afterwards. If judge-advocate or marshal is absent. Acting judge-advocate to continue through trial.

Officers on a court-martial shall rank by seniority of commission. The court may adjourn, when necessary, before a judge-advocate appears, and before they are qualified. Rank of officers.

SECT. 166. Before a court-martial proceeds to the trial of an officer, the judge-advocate shall administer to the president and members, severally, the following oath: Members to be sworn. G.S. 13, § 160.

You, A B, do swear, that without partiality, favor, fear, prejudice or hope of reward, you will well and truly try the cause now before you, between the Commonwealth and the person (or persons, if more than one is accused, in the same complaint,) to be tried; and that you will not divulge the sentence of this court-martial, until it shall be approved or disapproved of, and that you will not discover the vote or opinion of a member, unless required to give evidence thereof, as a witness, in due course of law: So help you, God. Form of oath of president and members.

And the president shall administer to the judge-advocate the following oath:

You, A B, do swear, that you will faithfully and impartially —of judge-discharge your duties as judge-advocate on this occasion, as well to advocate.

the Commonwealth as to the accused; and that you will not on any account at any time divulge the vote or opinion of any member of this court-martial, unless required to give evidence thereof, as a witness, in due course of law: So help you, God.

Challenges. No member shall be challenged by the government or the accused until the president, members and judge-advocate are sworn. Only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of it. The person challenged shall not vote, but the president and other members shall try whether the challenge is good.

—causes of, when waived. 22 Pick. 501. Illegality or irregularity in the detail of a member of the court shall be good cause of challenge by either party, but shall be considered as waived unless the objection is taken in the time and in the manner aforesaid.

If accused is absent or withdraws. If the accused neglects to appear and defend, or refuses to plead, or withdraws in contempt of the court, the court may proceed to trial and judgment, as if he had pleaded not guilty.

Witnesses summoned must appear. Persons summoned by the judge-advocate or a justice of the peace, shall appear and give evidence before a court-martial, (but the defendant's witnesses shall have their fees first tendered to them,) and the penalties for neglect to appear shall be the same, and the judge-advocate may issue a *capias*, in like manner as in criminal prosecutions.

—oath of. Before the witnesses testify they shall be sworn by the judge-advocate in the following form :

You, A B, do swear, [or affirm,] that the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth: So help you, God, [or, This you do under the pains and penalties of perjury, in case the witness affirms]

Evidence of default in returns. When the adjutant-general is complainant for neglect or default in making returns, he shall not be required to be present, and his certificate shall be sufficient *prima facie* evidence that the return was or was not made, and that a copy of a return is true.

Copies of documents, and how authenticated. Judge-advocates shall be the certifying officers to authenticate copies of papers and documents used before courts-martial, courts of inquiry, or boards of officers, except papers or documents from the adjutant-general's

office, which shall be certified by him ; but copies may be proved as in other courts.

The statement of the complainant and the defence of the accused, and motions, arguments and objections to the proceedings by either party, and the answers thereto, shall be submitted to the court in writing ; the evidence and proceedings in and out of the court, and opinions of the judge-advocate on questions of law arising during the trial shall be put in writing by him. After the prosecution and defence are concluded he shall state and sum up the evidence, and give his opinion to the court upon matters of law ; which opinion, with the judgment, he shall put in writing.

Proceedings
and evidence
to be in
writing.

When a question is to be decided, the judge-advocate shall receive the vote of each member, beginning with the youngest and proceeding to the eldest. The president shall not vote ; and unless two-thirds of the members agree that the accused is guilty he shall be acquitted. If two-thirds of the members find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be dismissed from office, either or all of them ; and in the last case, he may be further adjudged to be disqualified from holding any military office during life or a term of years.

Votes, how
taken.

—two-thirds
required to
convict.

Sentence.

Courts-martial may preserve order during their session ; and whoever in such court behaves in a disorderly or insulting manner, or makes a tumult or disturbance, may be arrested by order of the court, and confined not exceeding twenty-four hours, and fined not exceeding five dollars, either or both. If the fine is not paid, the judge-advocate shall issue a mittimus forthwith to commit such person to prison, in the same manner and with the same effect as upon executions from justices of the peace in cases of prosecutions for non-payment of other military fines and costs.

Courts-mar-
tial may pre-
serve order.

The record of the trial and judgment, with the papers used therein, or copies thereof, certified by the judge-advocate, shall be authenticated by his certificate and signature, and sealed up and transmitted by him to the officer who ordered the court, who shall annex thereto his approval or disapproval of the same, and the reasons

Records,
how authen-
ticated and
transmitted.

thereof in writing, and transmit the same as soon as may be to the office of the adjutant-general, to be kept and preserved.

Pay roll.

The judge-advocate shall also make, certify and transmit the pay-roll of the court-martial to the same office.

Copies to be furnished.

The officer ordering the court, and the party tried thereat, shall receive, upon request, from the adjutant-general, a copy of the record; the party tried paying a reasonable sum for his copy.

Judgment of disqualification may be reversed.

The judgment of disqualification may, after approval, be reversed in whole or in part by the commander-in-chief, but all other parts of the sentence, when approved, shall remain in full force.

What officers may be tried by court-martial, and for what offences.
G.S. 18, § 161.
1864, 238, § 168.

SECT. 167. Every commissioned officer may be tried by a court-martial for the following offences: For unmilitary or unofficer-like conduct when on duty; for neglect of any duty required in this chapter; for disobedience of orders, or an act contrary to the provisions of this chapter; for oppression or injury of any under his command; for a combination or attempt to break, resist or evade the laws or lawful orders given to a person, or advising any person so to do; for insult to a superior officer in the exercise of his office; for presuming to exercise his command while under arrest, in which case, if guilty, he shall be removed from office; for neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or ordered by his superior officer; for excusing, as commanding officer of a company, any person under his command, for deficiency or unnecessary absence, or after the expiration of the time allowed by law; for neglect or refusal to make a draft or detachment, when legally ordered to do so; for neglect or refusal to cause prosecutions to be commenced for fines, when it is necessary; for parading the troops under his command on days of election, contrary to the provisions of section one hundred and fifteen; for receiving any fee or gratuity, as surgeon or assistant-surgeon, for a certificate of inability to do military duty; for neglect, when detailed to train and discipline a company, to make complaint for neglect or violation of duty, as provided by law, or for any other neglect for which a command-

ing officer of the company would be liable; for neglect or refusal to march, to make a draft, or for disobedience to an order, in case of rebellion or insurrection, as provided in sections one hundred and thirty-six to one hundred and thirty-nine inclusive, in which case the offender shall be cashiered; for refusal or neglect to obey a precept or order to call out the militia, or an order issued in obedience thereto, in case of tumult, riot or other cause, as provided in sections one hundred and forty-one to one hundred and forty-three inclusive, or for advising any officer or soldier to do the like; in which cases, the offender shall be cashiered, besides being subject to fine and imprisonment, as provided in section one hundred and forty-two.

SECT. 168. Any fine not exceeding two hundred dollars, may be inflicted on any officer, by sentence of a general or division court-martial, as a part of, or the whole of such sentence; and such fines shall be prosecuted by the judge-advocate, or person appointed to act as such at the court-martial, in an action of tort, to the use of the Commonwealth; and if any judgment for costs is rendered against any judge-advocate in such case, the officer to whom the execution upon such judgment is delivered, shall demand payment of the execution of the treasurer of the county in which such judgment is rendered, and the said treasurer shall pay the same, and it shall be allowed to said county, in the settlement of said treasurer's account with the Commonwealth.

Fines imposed, how prosecuted for.

Costs against judge-advocate, how paid.
G.S. 13, § 162, 1864, 238, § 169.

GENERAL AND DIVISION COURTS OF INQUIRY.

SECT. 169. General and division courts of inquiry shall consist of three officers and the judge-advocate of the division in which they are held; and they may be ordered and organized in the like manner as courts-martial, and, under the same regulations, may examine into the nature of a transaction, imputation or accusation made against any officer by an inferior. Vacancies shall be filled as in courts-martial.

Courts of inquiry, how ordered.

The judge-advocate shall administer to each of the officers composing the court of inquiry, the following oath:

Oath of president and members.

You, A B, do swear that you will well and truly examine and inquire into the matter now before you, without fear, favor, partiality, prejudice, or hope of reward: So help you, God.

—of judge-advocate.

After which the president shall administer to the judge-advocate the following oath:

You, A B, do swear that you will impartially record the proceedings of the court, and the evidence to be given in the case now in hearing. So help you, God.

Witnesses.
G.S.13, § 164.

Witnesses shall be summoned in the same manner, take the same oath, and be examined and cross-examined by the parties in the same way, as on trials before courts-martial; but the court shall not give their opinions on the merits of the case, unless specially required so to do.

Judge-advocate to attend courts of inquiry.
G.S.13, § 164.

SECT. 170. Judge-advocates shall attend courts of inquiry in their division, in the same manner as they attend courts-martial; and special judge-advocates for the court shall be appointed in the same manner in like cases. The proceedings therein shall be recorded, and, with the papers and documents used therein, authenticated and transmitted by the judge-advocate to the officer who ordered the court, in like manner as in courts-martial.

Guard not to be ordered, except.
G.S.13, § 165.

SECT. 171. No officer appointing a court-martial, court of inquiry or board of officers, shall order a guard for the same, unless in his opinion it is necessary for their protection.

Construction of "soldier" and "company."
G.S.13, § 173.

SECT. 172. In this chapter the word "soldier" shall include musicians and all persons in the volunteer or enrolled militia except commissioned officers, and the word "company" may include battery.

Penalty for falsely giving certificate that party is a Quaker, &c., or falsely claiming to be such.
1864, 238, § 173.

SECT. 173. If elders or overseers of a society of Quakers or Shakers give the certificate provided in the tenth section to a person who does not profess the religious faith of their society, or who is not a member thereof; or who is not conscientiously scrupulous of bearing arms, each elder or overseer so offending shall forfeit two hundred dollars to the use of the Commonwealth, and be imprisoned not exceeding six months. And any person claiming to be exempted from enrolment by virtue of such a certificate, who does not pro-

fess the religious faith or is not a member of the society named therein, or who is not conscientiously scrupulous of bearing arms, shall be liable to the same penalty.

SECT. 174. Civil officers named in this chapter neglecting or refusing to obey its provisions shall, except as otherwise specially provided, forfeit not less than twenty nor more than five hundred dollars.

SECT. 175. The provisions of this chapter concerning the powers and duties of the selectmen of towns, shall be construed to include the mayor and aldermen of any city.

SECT. 176. A company may remain unattached to any regiment, brigade or division, or may be attached to a brigade or division whenever, in the opinion of the commander-in-chief, the interests of the service require it; and the commanding officer of any such unattached company shall sign the warrants of the non-commissioned officers of said company, who may have been duly appointed, and any warrant so signed shall be in all respects valid: *provided*, that any company attached to a brigade or division shall be subject to the immediate orders of the commander of the brigade or division to which such company may be so attached, according to the provisions of the twenty-second section of this act.

SECT. 177. [Repealed.] 1865, 250, § 9.

SECT. 178. [Repealed.] 1867, 206, § 6.

SECT. 179. No citizen of the Commonwealth above 1865, 250, § 10.

the age of forty-five years shall, on account of such age, be ineligible to office in the militia, nor incapable of serving in a volunteer company, and no citizen of the Commonwealth, otherwise qualified, shall be ineligible to office in the militia from not having been enrolled therein.

SECT. 180. The commander of a regiment may discharge any non-commissioned officer or private in the regiment, whenever the captain of his company unreasonably refuses to make application for such discharge under the provisions of section twenty-six of this act.

SECT. 181. The commander-in-chief may, whenever in his opinion the interests of the service require it,

—on civil officers.
G.S. 18, § 174.
1864, 238, § 176.

“Selectmen” to include mayor and aldermen.
G.S. 18, § 175.

1864, 238, § 176.
Companies may remain unattached in certain cases, or be attached to divisions, &c.
1865, 250, § 8.

1865, 250, § 9.
1867, 206, § 6.
1865, 250, § 10.

1867, 206, § 6.
Citizens above age of forty-five, or not enrolled, not ineligible to office.

1865, 19, § 4.

Discharge of soldiers when captain refuses.
1865, 250, § 12.

—by commander-in-chief.
1865, 250, § 13.

discharge any non-commissioned officer or private of a volunteer company.

Minimum
number in
company.
1867, 266.

SECT. 182. The minimum number of officers, non-commissioned officers and privates to any company shall hereafter be forty-eight.

Company
may be dis-
banded when
it has num-
ber below
minimum.
1865, 250, §
17.
1867, 266.

SECT. 183. Any company now organized, or that may hereafter be organized under the provisions of law, may be disbanded and their officers discharged by the commander-in-chief, whenever the number of officers, non-commissioned officers and privates duly enrolled therein for active service duty shall be less than forty-eight: *provided*, that such officers shall first have returned or accounted to the quartermaster-general for all uniforms, arms, equipments and other property belonging to the Commonwealth for which they may be responsible.

None but or-
ganized com-
panies allow-
ed to be
formed, or to
parade, &c.
1864, 238, §
177.
1865, 250, §
19.

SECT. 184. It shall not be lawful for any body of men whatsoever, other than the regularly organized corps of the volunteer militia, the troops of the United States, and the ancient and honorable artillery company, and the veteran artillery association of Newburyport, to associate themselves together as a military company or organization, or to parade in public with arms in any city or town of this Commonwealth without the license of the governor thereof, which may at any time be revoked; nor shall it be lawful for any city or town to raise or appropriate any money toward arming, equipping, uniforming or in any way supporting, sustaining or providing drill-rooms or armories for any such body of men: *provided*, that associations wholly composed of soldiers honorably discharged from the service of the United States, may parade in public with arms, upon the reception of any regiments or companies of soldiers returning from said service, and for the purpose of infantry escort duty at the burial of deceased soldiers, having first obtained the written permission so to do of the mayor and aldermen or selectmen of the cities or towns in which they desire to parade.

Proviso.

Penalty for
unlawful
military pa-
rades.
1864, 238, §
178.

SECT. 185. Whoever offends against the provisions of the preceding section, or belongs to or parades with any such unauthorized body of men, with arms, shall be punished by a fine not exceeding the sum of ten

dollars, or by imprisonment in the house of correction or common jail for a term not exceeding six months.

SECT. 186. Any non-commissioned officer or private of the volunteer militia, who enlisted between the fourteenth day of May in the year eighteen hundred and sixty-four, and the sixteenth day of June in the year eighteen hundred and sixty-five, pursuant to the provisions of the two hundred and thirty-eighth chapter of the acts of eighteen hundred and sixty-four, shall be discharged therefrom at his own request or by request of his parent or guardian at any time within thirty days from and after the passage of this act.

Persons enlisted between May 14, 1864, and June 16, 1865, may be discharged.

SECT. 187. Application for discharge under the preceding section shall be made in writing to the commanding officer of the company in which such non-commissioned officer or private is enrolled, and said commanding officer shall upon receipt of such application forthwith cause the name of the applicant to be stricken from the roll of his company: *provided, however*, that no such non-commissioned officer or private shall receive a discharge as aforesaid, until he shall have returned or accounted to the commanding officer of his company for any and all uniforms, arms, equipments or other property belonging to the Commonwealth, in his possession, nor until he shall have first paid or discharged all assessments made upon him under the constitutional articles of agreement of the company to which he belongs.

—application for discharge to be made in writing.

Proviso.

SECT. 188. Nothing contained in this act shall be construed as affecting the right of the ancient and honorable artillery company to maintain its organization as a military company according to ancient usage, and agreeably to the provisions of its constitution and by-laws, provided the same are not repugnant to the laws of this Commonwealth.

Right of ancient and honorable artillery company not affected.

SECT. 189. The two hundred and nineteenth chapter of the acts of the year eighteen hundred and sixty-one; the one hundred and eleventh and one hundred and sixty-seventh chapters of the acts of the year eighteen hundred and sixty-two; the one hundred and sixty-seventh, one hundred and ninety-third and two hundred and forty-third chapters of the acts of the year eighteen

Repeal of 1861, 219, 1862, 111, 167, 1868, 167, 193, 243, 1864, 238, 1866, 19, 250.

hundred and sixty-three; the two hundred and thirty-eighth chapter of the acts of the year eighteen hundred and sixty-four; the nineteenth and two hundred and fiftieth chapters of the acts of the year eighteen hundred and sixty-five, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed; and this section shall not be construed as reviving or any manner restoring any former acts or parts of acts inconsistent with the provisions of this act, that were repealed by either of the chapters herein before named.

The Amendments contained in the first section of chapter two hundred and sixty-six of the laws of eighteen hundred and sixty-seven, have been inserted in their proper places in the foregoing sections.

The following are the remaining sections numbered as in said Act.

Commanding officer to order out com. and non-com. officers for elementary drill.
1867, 266.

SECT. 2. The commanding officer of every regiment, battalion or detached company, may order out the commissioned and non-commissioned officers under his command, for 'elementary drill, two separate days between the middle of May and the middle of July, in each year, at such place as he shall deem most convenient; and if the place of any such commissioned or non-commissioned officer, in any company, shall be vacant from any cause, it shall be the duty of the commanding officer of such company to detail from the enlisted men under his command, a number sufficient to make up the complement of commissioned and non-commissioned officers to which by law his company is entitled.

Mileage.

And each person so ordering and so ordered, that shall attend any such drill, shall receive for his necessary travel, to and from the place of drill, the sum of five cents per mile, not exceeding forty miles in all.

Fines for non-attendance.
1867, 266.

SECT. 3. Every commissioned and non-commissioned officer or private, unnecessarily neglecting to attend, at the time and place appointed for drill, as aforesaid, shall forfeit and pay the sum of three dollars for every such neglect, to be recovered by any commissioned officer,

in and for the use of his regiment, battalion, or detached company.

SECT. 4. The amount to which each person is entitled for travel, as aforesaid, shall be certified to the adjutant-general, under oath, by the commanding officer of each regiment, battalion, or detached company, and the same shall be paid from the treasury of the Commonwealth, as follows, viz.: That portion for travel of commissioned officers, non-commissioned officers and enlisted men of companies, to the commanding officers thereof, and that portion for travel of field and staff officers of regiments or battalions, to the commanding officers thereof respectively, to be by them paid over to the parties entitled thereto.

Amount for travel, to whom paid. 1867, 266.

SECT. 5. Every officer, non-commissioned officer and private of a company, who shall be present during the whole term of the annual encampment, and there perform all the duties required by law, shall receive in addition to the compensation provided in section one hundred and forty-six of the act to which this is an amendment, the sum of one dollar, to be applied towards defraying the general expenses of his company; the manner of making the return and pay roll, the mode of payment by cities and towns, and the reimbursement by the state, shall be the same as now provided by law for services at the May inspection and the annual encampment.

Additional pay to officers and soldiers present during whole term of encampment, and mode of payment. 1867, 266.

SECT. 6. Sections forty-six, one hundred and ten, one hundred and seventy-seven, and one hundred and seventy-eight of said chapter two hundred and nineteen of the acts of the year eighteen hundred and sixty-six, and all other provisions of said chapter inconsistent with this act of amendment are hereby repealed.

Repeal of §§ 46, 110, 177, 178, chap. 219, 1866. 1867, 266.

SECT. 7. This act shall take effect upon its passage.

When act takes effect. 1867, 266.

[Approved, May 24, 1867.]

1864.

[Chapter 301.]

AN ACT ESTABLISHING RULES AND ARTICLES FOR
GOVERNING THE TROOPS OF THE COMMONWEALTH,
AND THE MILITIA IN ACTUAL SERVICE.

*Be it enacted by the Senate and House of Representatives,
in General Court assembled, and by the authority of the same,
as follows:—*

Rules for
militia when
in actual
service.

When
deemed to be
in actual
service.

Attendance
on divine
service.

SECTION 1. The following shall be the rules and articles by which the troops of this Commonwealth and the militia thereof, when called into actual service, shall be governed. And the militia shall be deemed to be in actual service, and subject to such rules and articles, whenever called out in case of war, invasion, the prevention of invasion, insurrection, to suppress riots, or to aid civil officers in the execution of the laws:

Article 1. It is earnestly recommended to all officers and soldiers diligently to attend divine service; and all officers who shall behave indecently or irreverently at any place of divine worship shall, if commissioned officers, be brought before a general court-martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending shall, for his first offence, forfeit one-sixth of a dollar, to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined twenty-four hours; and for every like offence, shall suffer and pay in like manner; which money, so forfeited, shall be applied, by the captain or senior officer of the troop or company, to the use of the sick soldiers of the company or troop to which the offender belongs.

Art. 2. Any non-commissioned officer or soldier who shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article; and a commissioned officer shall forfeit and pay, for each and every such offence, one dollar, to be applied as in the preceding article.

Using profane oaths or execrations.

Art. 3. Every chaplain commissioned in the troops or militia of this Commonwealth, who shall absent himself from the duties assigned him, excepting in cases of sickness or leave of absence, shall, on conviction thereof before a court-martial, be fined not exceeding one month's pay, besides the loss of his pay during his absence; or be discharged, as the said court-martial shall judge proper.

Chaplain absents himself from duties.

Art. 4. Any officer or soldier who shall use contemptuous or disrespectful words against the president of the United States, against the vice-president thereof, against the congress of the United States, or against the chief magistrate or legislature of this Commonwealth, if a commissioned officer, shall be cashiered, or otherwise punished, as a court-martial shall direct; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted on him by the sentence of a court-martial.

Using disrespectful language against public officers, congress or legislature.

Art. 5. Any officer or soldier who shall behave himself with contempt or disrespect toward his commanding officer, shall be punished, according to the nature of his offence, by the judgment of a court-martial.

Disrespectful behavior to commanding officer.

Art. 6. Any officer or soldier who shall begin, excite, cause, or join in, any mutiny or sedition, in any troop or company in the service of this Commonwealth, or in any party, post, detachment or guard, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

Mutiny or seditious conduct.

Art. 7. Any officer, non-commissioned officer or soldier, who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or coming to the knowledge of any intended mutiny, does not, without delay, give information thereof to his commanding officer, shall be punished by the sentence of a court-martial with death, or otherwise, according to the nature of his offence.

Not suppressing mutiny, nor giving information of same.

Striking, resisting or disobeying superior officer.

Art. 8. Any officer or soldier who shall strike his superior officer, or draw or lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

Discharge of soldier to be in writing.

Art. 9. No non-commissioned officer or soldier shall be dismissed the service without a discharge in writing; and no discharge granted to him shall be sufficient which is not signed by a field officer of the regiment to which he belongs, or commanding officer, where no field officer of the regiment is present; and no discharge shall be given to a non-commissioned officer or soldier before his term of service has expired, but by order of the commander-in-chief, or the sentence of a general court-martial; nor shall a commissioned officer be discharged the service but by order of the commander-in-chief, as provided in section fifty-six of an act entitled an act concerning the militia, approved in eighteen hundred and sixty-four, or by sentence of a general court-martial.

Furloughs, when and by whom granted.

Art. 10. Every colonel, or other officer commanding a regiment, troop or company, and actually quartered with it, may give furloughs to non-commissioned officers or soldiers, in such numbers, and for so long a time, as he shall judge to be most consistent with the good of the service; and a captain, or other inferior officer, commanding a troop or company, or in any garrison, fort or barrack of the Commonwealth (his field officer being absent,) may give furloughs to non-commissioned officers or soldiers, for a time not exceeding twenty days in six months, but not to more than two persons to be absent at the same time, excepting some extraordinary occasion should require it.

Certificates of absence.

Art. 11. At every muster, the commanding officer of each regiment, troop or company, there present, shall give to the commissary of musters, or other officer who musters the said regiment, troop or company, certificates signed by himself, signifying how long such officers as shall not appear at the said muster, have been absent,

and the reason of their absence. In like manner, the commanding officer of every troop or company shall give certificates, signifying the reasons of the absence of the non-commissioned officers and private soldiers; which reasons and time of absence shall be inserted in the muster-rolls, opposite the names of the respective absent officers and soldiers. The certificates shall, together with the muster-rolls, be remitted by the commissary of musters, or other officer mustering, to the adjutant-general, as speedily as the distance of the place will admit.

Art. 12. Every officer who shall be convicted before a general court-martial, of having signed a false certificate relating to the absence of either officer or private soldier, or relative to his or their pay, shall be cashiered. Penalty for giving false certificate of absence or pay.

Art. 13. Every officer who shall knowingly make a false muster of man or horse, and every officer or commissary of musters, who shall willingly sign, direct or allow the signing of muster-rolls wherein such false muster is contained, shall, upon proof made thereof, by two witnesses, before a general court-martial, be cashiered, and shall be thereby utterly disabled to have or hold any office or employment in the service of the Commonwealth. Making false muster, or signing false rolls.

Art. 14. Any commissary of musters, or other officer, who shall be convicted of having taken money, or other thing, by way of gratification, on mustering any regiment, troop or company, or on signing muster-rolls, shall be displaced from his office, and shall be thereby utterly disabled to have or hold any office or employment in the service of the Commonwealth. Penalty for taking money, &c., on mustering or signing rolls.

Art. 15. Any officer who shall presume to muster a person as a soldier who is not a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly. Mustering a person not a soldier.

Art. 16. Every officer who shall knowingly make a false return to the adjutant-general, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop or company, or garrison under his command, or of the arms, ammunition, clothing or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered. Making false return to adjutant-general or to any superior.

Commanding officer to make monthly return to adjutant-general.

Art. 17. The commanding officer of every regiment, troop, or independent company or garrison of the Commonwealth, shall, in the beginning of every month, remit, through the proper channels, to the adjutant-general, an exact return of the regiment, troop, independent company, or garrison, under his command, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who shall be convicted of having, through neglect or design, omitted sending such returns, shall be punished, according to the nature of his crime, by the judgment of a general court-martial.

Desertion or absents of non-commissioned officer or soldier.

Art. 18. Any non-commissioned officer or soldier who shall desert, or, without leave from his commanding officer, absent himself from his troop, company or detachment, shall, upon being convicted thereof, suffer death, or such other punishment as shall be inflicted by the sentence of a general court-martial.

Not to enlist elsewhere without discharge.

Art. 19. No non-commissioned officer or soldier shall enlist himself in any other regiment, troop or company, without a regular discharge from the regiment, troop or company in which he last served, on the penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

Penalty if officer shall so receive deserter.

Advising officer or soldier to desert.

Art. 20. Any officer or soldier who shall be convicted of having advised or persuaded any other officer or soldier to desert, shall suffer death, or such other punishment as shall be inflicted upon him by the sentence of a court-martial.

Using reproachful language or gestures to another.

Art. 21. No officer or soldier shall use any reproachful or provoking speeches or gestures to another, upon pain, if an officer, of being put in arrest; if a soldier, confined, and of asking pardon of the party offended, in the presence of his commanding officer.

Sending challenge to fight a duel.

Art. 22. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge if sent, upon pain, if a commissioned officer,

of being cashiered; if a non-commissioned officer or soldier, of suffering punishment at the discretion of a court-martial.

Art. 23. If any commissioned or non-commissioned officer commanding a guard shall knowingly or willingly suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger; and all seconds, promoters and carriers of challenges, in order to duels, shall be deemed principals, and be punished accordingly. And it shall be the duty of every officer commanding an army, regiment, company, post or detachment, who is knowing to a challenge being given or accepted by any officer, non-commissioned officer or soldier, under his command, or has reason to believe the same to be the case, immediately to arrest and bring to trial such offenders.

Suffering persons to fight duels, aiding, &c.

Parties to be arrested.

Art. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays and disorders, though the persons concerned should belong to another regiment, troop or company; and either to order officers into arrest, or non-commissioned officers or soldiers into confinement, until their proper superior officers shall be acquainted therewith; and whosoever shall refuse to obey such officer (though of an inferior rank,) or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.

Officers to quell quarrels and disorders.

Art. 25. Any officer or soldier who shall upbraid another for refusing a challenge, shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept of challenges, as they will only have acted in obedience to the laws, and done their duty as good soldiers who subject themselves to discipline.

Upbraiding others for refusing challenge.

Art. 26. No sutler shall be permitted to sell any kind of liquors or victuals, or to keep their houses or shops open for the entertainment of soldiers, after nine at night, or before the beating of the reveille, or upon Sundays, during divine service or sermon, on the penalty of being dismissed from all future sutling.

Sutlers not to sell or keep shops open at certain times.

Art. 27. All officers, commanding in the field, forts, barracks or garrisons of the Commonwealth, are hereby

Commanding officers to see that

sutlers supply with equity.

required to see that the persons permitted to suttle shall supply the soldiers with good and wholesome provisions, or other articles, at a reasonable price, as they shall be answerable for their neglect.

Officer not to exact or permit exorbitant rent of sutler nor be interested in any traffic.

Art. 28. No officer commanding in any of the garrisons, forts or barracks of the Commonwealth, shall exact exorbitant prices for houses or stalls let out to sutlers, or connive at the like exactions in others; nor by his own authority, or for his private advantage, lay any duty or imposition upon, or be interested in, the sale of any victuals, liquors, or other necessities of life, brought into the garrison, fort or barracks for the use of the soldiers, on the penalty of being discharged from the service.

Shall keep good order, redress abuses, &c.

Art. 29. Every officer commanding in quarters, garrisons, or on the march, shall keep good order, and to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, or disturbing fairs or markets, or of committing any kind of riots, to the disquieting of the citizens of the United States, he, the said commander, who shall refuse or omit to see justice done to the offender or offenders, and reparation made to the party or parties injured, as far as part of the offender's pay shall enable him or them, shall, upon proof thereof, be cashiered, or otherwise punished, as a general court-martial shall direct.

Officer or soldier accused of capital crime or offence against person or property, commanding officers to assist delivery to civil magistrate.

Art. 30. When any commissioned officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offence against the person or property of any citizen of any of the United States, such as is punishable by the known laws of the land, the commanding officer and officers of every regiment, troop or company, to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use their utmost endeavors to deliver over such accused person or persons to the civil magistrate, and likewise be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring him or them to

trial. If any commanding officer or officers shall willfully neglect, or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the civil magistrates, or to be aiding and assisting to the officers of justice in apprehending such person or persons, the officer or officers so offending shall be cashiered.

Art. 31. If any officer shall think himself wronged, by his colonel, or the commanding officer of the regiment, and shall, upon due application being made to him, be refused redress, he may complain to the general or officer commanding in chief the forces in service, in order to obtain justice; who is hereby required to examine into said complaint, and take proper measures for redressing the wrong complained of, and transmit, as soon as possible to the adjutant-general a true state of such complaint, with the proceedings had thereon.

Officer deeming himself wronged by superior, may complain to general, who shall redress.

Art. 32. If any inferior officer or soldier shall think himself wronged by his captain or other officer, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a regimental court-martial, for the doing justice to the complainant; from which regimental court-martial either party may, if he thinks himself still aggrieved, appeal to a general court-martial. But if, upon a second hearing, the appeal shall appear vexatious and groundless, the person so appealing shall be punished at the discretion of the said court-martial.

An inferior officer or soldier, thinking himself wronged by captain, may complain, &c.

Appeal.

Art. 33. Any commissioned officer, store-keeper or commissary, who shall be convicted at a general court-martial of having sold, without a proper order for that purpose, embezzled, misapplied, or wilfully or through neglect suffered, any of the provisions, forage, arms, clothing, ammunition or other military stores belonging to the United States or Commonwealth, to be spoiled or damaged, shall, at his own expense, make good the loss or damage, and shall, moreover, forfeit all his pay, and be dismissed from the service.

Penalty for disposing property without order, embezzling or misapplying stores.

Art. 34. Any non-commissioned officer or soldier who shall be convicted at a regimental court-martial of having sold, or designedly or through neglect, wasted the ammunition delivered out to him, to be employed in the

Wasting ammunition.

service of the Commonwealth, shall be punished at the discretion of such court.

Having sold,
lost or spoiled
horse,
arms or
clothes.

Art. 35. Every non-commissioned officer or soldier who shall be convicted before a court-martial of having sold, lost or spoiled, through neglect, his horse, arms, clothes or accoutrements, shall undergo such weekly stoppages (not exceeding the half of his pay,) as such court-martial shall judge sufficient, for repairing the loss or damage; and shall suffer confinement or such other punishment as his crime shall deserve.

Embezzling
money in-
trusted to
officer.

Art. 36. Every officer who shall be convicted before a court-martial of having embezzled or misapplied any money with which he may have been intrusted, for the payment of the men under his command, or for enlisting men into the service, or for other purposes, if a commissioned officer, shall be cashiered and compelled to refund the money; if a non-commissioned officer, shall be reduced to the ranks, be put under stoppages until the money be made good, and suffer such punishment as such court-martial shall direct.

Captain to
be charged
with arms,
&c., fur-
nished com-
pany.

Art. 37. Every captain of a troop or company is charged with the arms, accoutrements, ammunition, clothing, or other warlike stores belonging to the troop or company under his command, which he is to be accountable for to his colonel in case of their being lost, spoiled or damaged, not by unavoidable accidents, or on actual service.

Penalty for
leaving camp
one mile.

Art. 38. All non-commissioned officers and soldiers who shall be found one mile from the camp without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted upon them by the sentence of a court-martial.

Lying out of
quarters.

Art. 39. No officer or soldier shall lie out of his quarters, garrison or camp, without leave from his superior officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

Soldier when
to retire to
quarters.

Art. 40. Every non-commissioned officer and soldier shall retire to his quarters or tent at the beating of the retreat; in default of which he shall be punished according to the nature of his offence.

Art. 41. No officer, non-commissioned officer or soldier shall fail in repairing, at the time fixed, to the place of parade, of exercise or other rendezvous appointed by his commanding officer, if not prevented by sickness or some other evident necessity, or shall go from the said place of rendezvous without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

Officers and soldiers not to fail to appear at parade, &c.

Art. 42. Any commissioned officer who shall be found drunk on his guard, party, or other duty, shall be cashiered. Any non-commissioned officer or soldier so offending, shall suffer such punishment as shall be inflicted by the sentence of a court-martial.

Penalty for drunkenness on duty.

Art. 43. Any sentinel who shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer death, or such other punishment as shall be inflicted by the sentence of a court-martial.

Sleeping at or leaving post.

Art. 44. No soldier belonging to any regiment, troop or company shall hire another to do his duty for him, or be excused from duty but in cases of sickness, disability or leave of absence; and every such soldier found guilty of hiring his duty, as also the party so hired to do another's duty, shall be punished at the discretion of a regimental court-martial.

Not to hire another to do one's duty.

Art. 45. And every non-commissioned officer conniving at such hiring of duty aforesaid, shall be reduced: and every commissioned officer knowing and allowing such ill practices in the service, shall be punished by the judgment of a general court-martial.

Conniving at such hiring.

Art. 46. Any officer belonging to the troops or militia of this Commonwealth, who, by discharging of firearms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison or quarters, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

Occasioning false alarms.

Art. 47. Any officer or soldier who shall, without urgent necessity, or without the leave of his superior officer, quit his guard, platoon or division, shall be punished

Quitting guard, platoon or division.

according to the nature of his offence, by the sentence of a court-martial.

Doing violence to persons bringing supplies.

Art. 48. No officer or soldier shall do violence to any person who brings provisions or other necessities to the camp, garrison or quarters of the forces of this Commonwealth, upon pain of death, or such other punishment as a court-martial shall direct.

Misbehaving before enemy, abandoning post, &c.

Art. 49. Any officer or soldier who shall misbehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard which he or they may be commanded to defend, or speak words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or Colors to plunder and pillage, every such offender, being duly convicted thereof, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

Making known watchword improperly or falsely.

Art. 50. Any person belonging to the forces in the service of this Commonwealth, who shall make known the watchword to any person who is not entitled to receive it according to the rules and discipline of war, or shall presume to give a parole or watchword different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

Disorderly behavior, committing waste, spoiling trees, &c.

Art. 51. All officers and soldiers are to behave themselves orderly in quarters and on their march; and whoever shall commit any waste or spoil, either in walks of trees, parks, warrens, fish-ponds, houses or gardens, corn-fields, inclosures of meadows, or shall maliciously destroy any property whatsoever belonging to the inhabitants of the United States, unless by order of the then commander-in-chief of the forces in actual service, shall (besides such penalties as they are liable to by law,) be punished according to the nature and degree of the offence, by the judgment of a regimental or general court-martial.

Forcing safeguard.

Art. 52. Whosoever, belonging to the forces in the service of this Commonwealth shall force a safeguard, shall suffer death.

Relieving enemy.

Art. 53. Whosoever shall relieve the enemy with money, victuals or ammunition, or shall knowingly har-

bor or protect an enemy, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

Art. 54. Whosoever shall be convicted of holding Informing
correspondence with, or giving intelligence to, the enemy.
enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

Art. 55. All public stores taken by the forces in the Public stores
service of this Commonwealth, in the enemy's camp, of enemy to
towns, forts or magazines, whether of artillery, ammunition, belong to
clothing, forage or provisions, shall be secured the State.
for the use of the Commonwealth; for the neglect of which the commanding officer is to be answerable.

Art. 56. If any commander of any garrison, fortress Penalty for
or post, shall be compelled, by the officers and soldiers compelling
under his command to give up to the enemy or to abandon surrender of
it, the commissioned officers, non-commissioned fort or post.
officers or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

Art. 57. All sutlers and retainers to the camp, and Suters sub-
all persons whatsoever, serving with the forces of this ject to rules
Commonwealth in the field, though not enlisted soldiers, of war.
are to be subject to orders, according to the rules and discipline of war.

Art. 58. Officers having brevets or commissions of a Brevet off-
prior date to those of the regiment in which they serve, cers, how to
may take place in courts-martial and on detachments, take rank.
when composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop or company to which such officers belong, they shall do duty and take rank both in courts-martial and on detachments which shall be composed of their own corps, according to the commissions by which they are mustered in the said corps.

Art. 59. If, upon marches, guards or in quarters, Officer high-
different corps shall happen to join or do duty together, est in rank
the officer highest in rank of the line of the forces of to command
this Commonwealth by commission, there on duty or in when corps
are joined.

quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise speedily directed by the commander-in-chief, according to the nature of the case.

General
courts-mar-
tial, of num-
ber to con-
sist.

Art. 60. General courts-martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen where that number can be convened without manifest injury to the service. The president shall not be the commander-in-chief, nor the commanding officer of the army, detachment or garrison where the offender shall be tried, nor under the rank of a field officer.

Commander
may ap-
point.

Sentences to
be approved
before exe-
cution.

Art. 61. The commander-in-chief, or any general officer commanding a separate division, brigade or garrison, may appoint general courts-martial whenever necessary. But no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court-martial, in the time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution, until after the whole proceedings shall have been transmitted to the adjutant-general, to be laid before the commander-in-chief for his confirmation or disapproval and orders in the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer for the time being, as the case may be.

General
courts-mar-
tial, how ap-
pointed
when officer
commanding
army is ac-
cuser.

Art. 62. Whenever a general officer commanding a separate army shall be the accuser or prosecutor of any officer in the forces of this Commonwealth under his command, the general court-martial for the trial of such officer shall be appointed by the commander-in-chief. The proceedings and the sentence of the said court shall be sent directly to the adjutant-general, to be by him laid before the commander-in-chief for his confirmation or approval, or orders in the case.

Regimental
courts-mar-
tial, &c.,
how appoint-
ed, held, &c.

Art. 63. Every officer commanding a regiment or corps may appoint, for his own regiment or corps, courts-martial, to consist of three commissioned officers, for

the trial and punishment of offences not capital, and decide upon their sentences. For the same purpose, all officers commanding any of the garrisons, forts, barracks, or other places where the troops consist of different corps, may assemble courts-martial, to consist of three commissioned officers, and decide upon their sentences. Regimental courts-martial may also be held by the colonel of the regiment to which the offender belongs, or by some field officer of the regiment detailed for that purpose, who shall hear and determine the offence, and order the punishment that shall be inflicted; and shall also make a record of his proceedings, and submit the same to the brigade commander, who, upon approval of the proceedings of such officer, shall order the same to be executed: *provided*, that in the event of there being no brigade commander, the proceedings as aforesaid shall be submitted for approval to the commanding officer of the post.

Art. 64. No garrison or regimental court-martial shall have the power to try capital cases or commissioned officers; neither shall they inflict a fine exceeding one month's pay, nor imprison, nor put to hard labor, any non-commissioned officer or soldier for a longer time than one month. Jurisdiction of garrison or regimental court.

Art. 65. The judge-advocate, or some person deputed by him, or by the general or officer commanding the army, detachment or garrison, shall prosecute in the name of the Commonwealth, but shall so far consider himself as counsel for the prisoner, after the said prisoner shall have made his plea, as to object to any leading question to any of the witnesses, or any question to the prisoner the answer to which might tend to criminate himself; and administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of the regimental and garrison courts-martial: Duty of judge-advocate.

"You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the Commonwealth of Massachusetts and the prisoner to be tried, and that you will duly administer justice, according to the provisions of 'An Act establishing Rules and Articles for Governing the Troops of this Commonwealth, and Militia in Actual Service,' without partiality, favor or affection; and if any doubt should arise, not explained Oath of members.

by said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law: So help you God.

And as soon as the said oath shall have been administered to the respective members, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following words:

Oath of
Judge.

"You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same: So help you God."

Proceedings
if prisoner
stands mute
or evades.

Art. 66. When a prisoner, arraigned before a general court-martial, shall, from obstinacy and deliberate design, stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had regularly pleaded not guilty.

Challenge of
members.

Art. 67. When a member shall be challenged by a prisoner, he must state his cause of challenge, of which the court shall, after due deliberation, determine the relevancy or validity, and decide accordingly; and no challenge to more than one member at a time shall be received by the court.

Behavior
and voting
of courts.

Art. 68. All the members of a court-martial are to behave with decency and calmness; and, in giving their votes, are to begin with the youngest in commission.

Oath of
witnesses.

Art. 69. All persons who give evidence before a court-martial are to be examined on oath or affirmation, in the following form:

"You swear, or affirm (as the case may be,) the evidence you shall give in the cause now in hearing shall be the truth, the whole truth, and nothing but the truth: So help you God."

Depositions,
except in
capital cases.

Art. 70. On the trials of cases not capital, before courts-martial, the deposition of witnesses not in the line or staff of the army, may be taken before some justice of the peace and read in evidence: *provided,*

the prosecutor and the person accused are present at the taking of the same or are duly notified thereof.

Art. 71. No officer shall be tried but by a general court-martial, nor by officers of an inferior rank, if it can be avoided. Nor shall any proceedings of trials be carried on, excepting between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court-martial, require immediate example.

Officers to be tried only by general court-martial.
Hours of trials.

Art. 72. No person whatsoever shall use any menacing words, signs or gestures, in presence of a court-martial, or shall cause any disorder or riot, or disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.

Penalty for disturbing court-martial.

Art. 73. Whenever any officer shall be charged with a crime, he shall be arrested and confined in his barracks, quarters or tent, and deprived of his sword by the commanding officer. And any officer who shall leave his confinement before he shall be set at liberty by his commanding officer, or by a superior officer, shall be cashiered.

Officer charged with crime to be arrested.

Art. 74. Non-commissioned officers and soldiers, charged with crimes, shall be confined until tried by a court-martial or released by proper authority.

Soldiers, &c., so charged to be confined.

Art. 75. No officer or soldier who shall be put in arrest shall continue in confinement more than eight days, or until such time as a court-martial can be assembled.

Confinement not to exceed eight days.

Art. 76. No officer commanding a guard, or provost-marshal, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of this Commonwealth: *provided*, the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

Officer not to refuse custody of prisoners.

Proviso.

Art. 77. No officer commanding a guard, or provost-marshal, shall presume to release any person committed to his charge without proper authority for so doing, nor shall he suffer any person to escape, on the penalty of being punished for it by the sentence of a court-martial.

Not to release prisoners without order.

Shall make report of prisoner committed to their charge.

Art. 78. Every officer or provost-marshal, to whose charge prisoners shall be committed, shall, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, make report in writing to the commanding officer, of their names, their crimes, and the names of the officers who committed them, on the penalty of being punished for disobedience or neglect, at the discretion of a court-martial.

Commissioned officer convicted of unbecoming conduct. Sentence of suspension may deprive of pay.

Art. 79. Any commissioned officer convicted, before a general court-martial, of conduct unbecoming an officer and a gentleman, shall be dismissed the service.

Art. 80. In cases where a court-martial may think it proper to sentence a commissioned officer to be suspended from command, they shall have power also to suspend his pay and emoluments for the same time, according to the nature and heinousness of the offence.

When cashiered for cowardice or fraud, to be published.

Art. 91. In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added in the sentence, that the crime, name, and place of abode, and punishment of the delinquent, be published in the newspapers in and about the camp, and of the county, city and town from which the offender came, or where he usually resides; after which it shall be deemed scandalous for an officer to associate with him.

When there are not adequate officers at any post, court-martial may be held elsewhere.

Art. 82. The commanding officer of any post or detachment, in which there shall not be a number of officers adequate to form a general court-martial, shall, in cases which require the cognizance of such a court, report to the commander-in-chief, who shall order a court to be assembled at the nearest post, and the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

Two-thirds vote necessary for capital conviction. Not to be twice convicted.

Art. 83. No person shall be sentenced to suffer death but by the concurrence of two-thirds of the members of a general court-martial, nor except in the cases herein expressly mentioned; and no officer, non-commissioned officer, soldier or follower of the army, shall be tried a second time for the same offence.

Offence to have been committed within two years, unless, &c.

Art. 84. No person shall be liable to be tried and punished by a general court-martial for any offence which shall appear to have been committed more than two years before the issuing of the order for such trial,

unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.

Art. 85. Every officer authorized to order a general court-martial shall have power to pardon or mitigate any punishment ordered by such court, except the sentence of death, or of cashiering an officer; which, in the cases where he has authority by article sixty-two to carry them into execution, he may suspend, until the pleasure of the commander-in-chief can be known; which suspension, together with copies of the proceedings of the court-martial, the said officer shall immediately transmit to the commander-in-chief, for his determination. And the colonel or commanding officer of the regiment or garrison where any regimental or garrison court-martial shall be held, may pardon or mitigate any punishment ordered by such court to be inflicted.

Pardon and mitigation of sentence.

Art. 86. Every judge-advocate, or person officiating as such, at any general court-martial, shall transmit, with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence of such court-martial to the adjutant-general; which said original proceedings and sentence shall be carefully kept and preserved in the office of said adjutant-general to the end that the persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.

Proceedings of general court-martial to be sent to adjutant-general.

The party, tried by any general court-martial shall, upon demand thereof, made by himself, or by any person or persons in his behalf, be entitled to a copy of the sentence and proceedings of such court-martial.

Prisoner may have copy.

Art. 87. In cases where the general or commanding officer may order a court of inquiry to examine into the nature of any transaction, accusation or imputation against any officer or soldier, the said court shall consist of one or more officers, not exceeding three, and a judge-advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing; all of whom shall be sworn to the faithful performance of their duty. This court shall have the same power to summon witnesses as a court-martial, and to examine them on oath. But they shall not give their opinion

Courts of inquiry, constitution, and powers and rights of accused.

on the merits of the case, excepting they shall be thereto specially required. The parties accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the circumstances in the question.

Courts of inquiry, when may be held, and proceedings, how authenticated.

Art. 88. The proceedings of a court of inquiry must be authenticated by the signature of the recorder and the president, and delivered to the commanding officer; and the said proceedings may be admitted as evidence by a court-martial, in cases not capital or extending to the dismissal of an officer, provided that the circumstances are such that oral testimony cannot be obtained. But as courts of inquiry may be perverted to dishonorable purposes, and may be considered as engines of destruction to military merit, in the hands of weak and envious commandants, they are hereby prohibited, unless directed by the commander-in-chief or demanded by the accused.

Oath of court.

Art. 89. The judge-advocate or recorder shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to your evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: So help you God."

Judge-advocate.

After which the president shall administer to the judge-advocate or recorder the following oath:

"You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidence to be given in the case in hearing: So help you God."

Witnesses.

The witnesses shall take the same oath as witnesses sworn before a court-martial.

Effects of deceased officer, how secured.

Art. 90. When any commissioned officer shall die or be killed in the service of the Commonwealth, the major of the regiment, or the officer doing the major's duty in his absence, or in any post or garrison, the second officer in command, shall immediately secure all his effects or equipage, then in camp or quarters, and shall make an inventory thereof, and forthwith transmit the same to the office of the adjutant-general, to the end that his executors or administrators may receive the same.

Art. 91. When any non-commissioned officer or soldier shall die or be killed in the service of the Commonwealth, the then commanding officer of the troop or company shall, in the presence of two other commissioned officers, take and account of what effects he died possessed of, above his arms and accoutrements, and transmit the same to the office of the adjutant-general; which said effects are to be accounted for and paid to the representatives of such deceased non-commissioned officer or soldier. And in case any of the officers so authorized to take care of the effects of deceased officers and soldiers, should, before they have accounted to their representatives for the same, have occasion to leave the regiment or post, by preferment or otherwise, they shall, before they be permitted to quit the same, deposit in the hands of the commanding officer or of the assistant military agent, all the effects of such deceased non-commissioned officers and soldiers, in order that the same may be secured for, and paid to their respective representatives.

Effects of non-commissioned officers and soldiers, above arms and equipments.

Art. 92. All officers, conductors, gunners, matrosses, drivers, or other persons whatsoever, receiving pay or hire in the service of the artillery or engineers of the Commonwealth, shall be governed by the aforesaid Rules and Articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the other troops in the service of the Commonwealth.

Persons in artillery or engineer service, subject to Rules and Articles.

Art. 93. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.

Crimes and offences not enumerated, courts-martial to have cognizance.

Art. 94. The commander-in-chief shall have power to prescribe the uniform of the troops and militia of this Commonwealth.

Uniform, governor may prescribe.

Art. 95. The foregoing Articles are to be read and published, once in every six months, to every garrison, regiment, troop or company in the service of the Commonwealth, and are to be duly observed and obeyed by

These articles to be read semi-annually to company.

all officers and soldiers who are, or shall be in said service.

Aliens, acting as spies, how punished.

Art. 96. In time of war, all persons not citizens of, or owing allegiance to, the United States of America, who shall be found lurking as spies in or about the fortifications or encampments of the armies of this Commonwealth, or any of them, shall suffer death, according to the law and usage of nations, by sentence of a general court-martial.

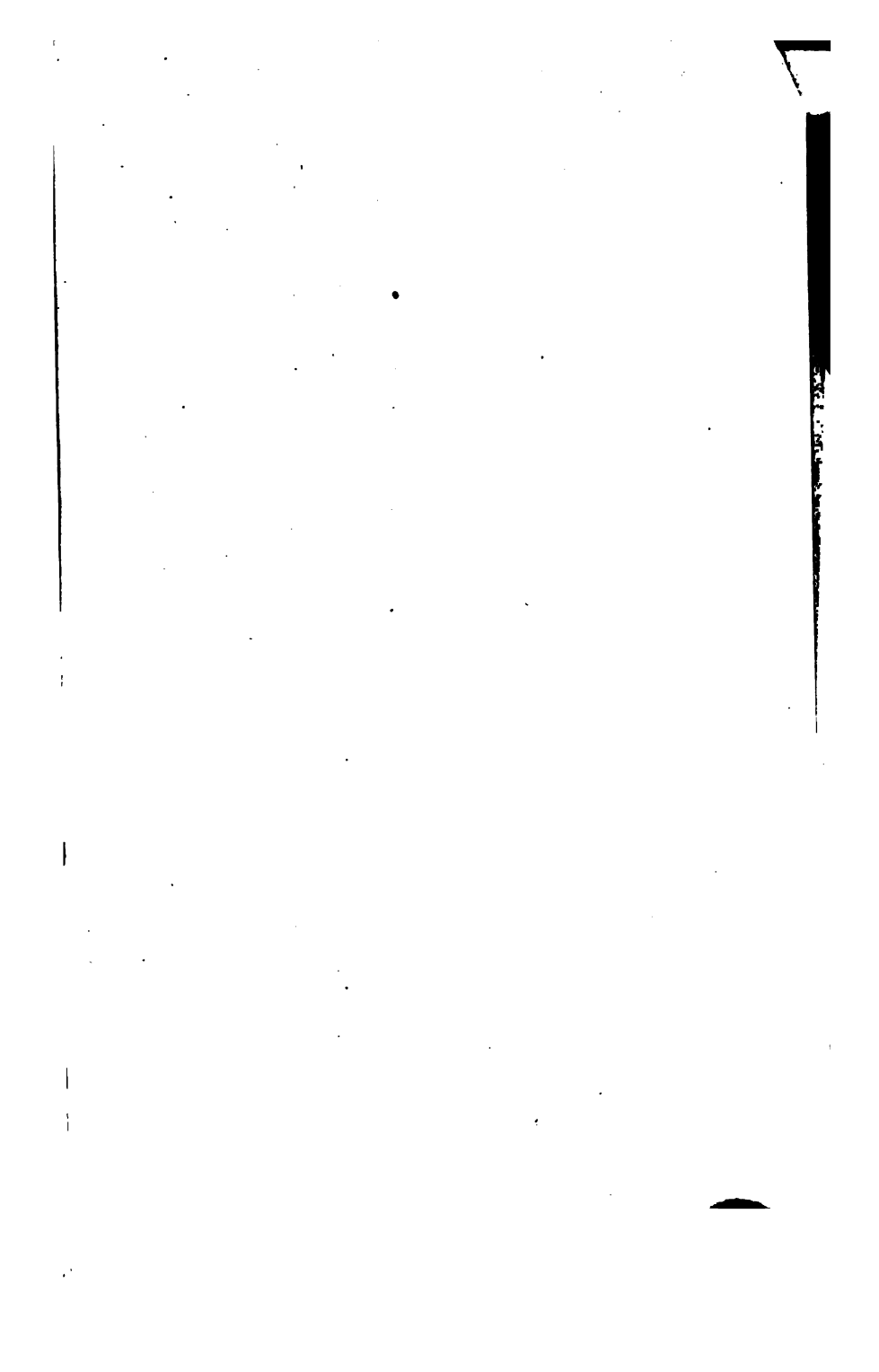
Punishment if officer fail to march, make draft, obey orders or resist civil law or advise thereto.

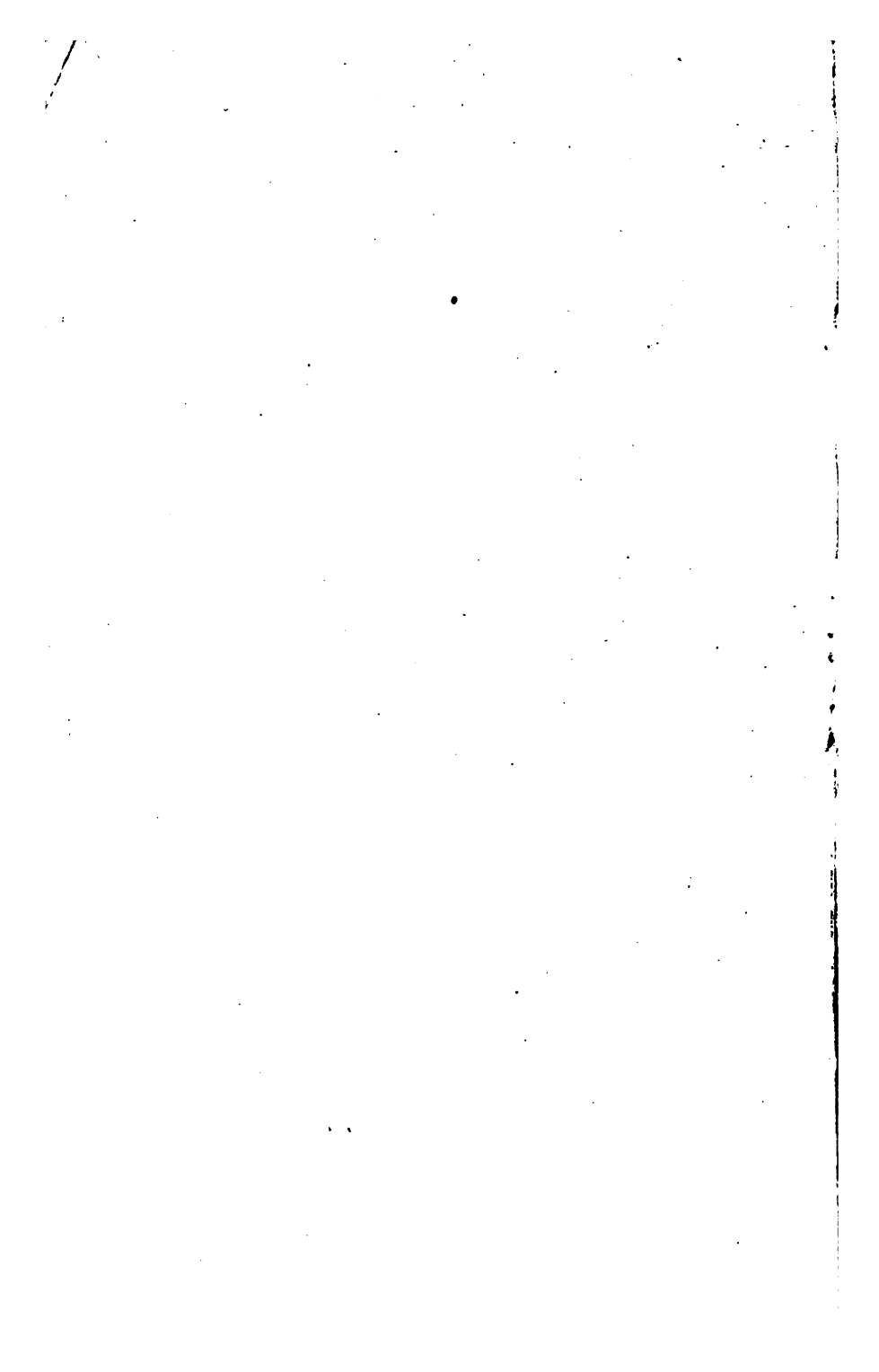
Art. 97. Any officer, who shall refuse or neglect to march to the place of rendezvous, to make any draft, or disobey any lawful order in case of war, invasion or insurrection, or who shall refuse or neglect to obey any precept or order to call out the militia, or any order issued in obedience to such order, in case of any tumult, riot or mob of men acting together by force with intent to commit felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the Commonwealth, or shall advise or persuade any other officer or soldier to do the like, shall be cashiered, and punished by fine or imprisonment not exceeding six months.

Additional penalty if soldier or musician deserts.

Art. 98. If any non-commissioned officer, musician or private shall desert the service of this Commonwealth, he shall, in addition to the other penalties herein before provided, be liable to serve for and during such a period as shall, with the time he may have served previous to his desertion, amount to the full term of the service for which he was held; and he may be tried by court-martial and punished, although the term of service for which he was held may have elapsed previous to his being apprehended and tried.

SECT. 2. This act shall take effect upon its passage.
[Approved May 14, 1864.]





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